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Vol. IV

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1938

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No. 2

KELLOGG COMPANY, PETITIONER,

vs.

NATIONAL BISCUIT COMPANY.

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No. 56

KELLOGG COMPANY, PETITIONER,

vs.

NATIONAL BISCUIT COMPANY.

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT.

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PETITIONS FOR CERTIORARI FILED { SEPTEMBER 10, 1937.  
MAY 23, 1938

CERTIORARI GRANTED MAY 31, 1938.



# TRANSCRIPT OF RECORD

(IN FIVE VOLUMES)

IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 5801.

October Term, 1935.

NATIONAL BISCUIT COMPANY,

*Plaintiff-Appellant,*

v.

KELLOGG COMPANY,

*Defendant-Appellee.*

Volume IV  
EXHIBITS.

(Pages 1 to 208 inclusive)

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF DELAWARE.

Filed August 10, 1935.



## INDEX TO EXHIBITS.

### PLAINTIFF'S EXHIBITS.

	Admitted		Printed	
	Vol.	Page	Vol.	Page
1-Carton of Shredded Wheat, Witness Wallace .....	I	246	...	...
2-Book Containing Samples of Cartons, Witness DeWeese .....	I	574	Not printed	
3-Book Containing Sample of Cartons, Witness DeWeese .....	I	574	Not printed	
4-Book Containing Sample of Cartons, Witness DeWeese .....	I	574	Not printed	
5-Kellogg Package, Waitress 172/8/11/32, Biltmore Hotel, Providence, Witness Sweet .....	I	326	...	...
6-Restaurant Check, Paid September 2, 1932, Biltmore Grill Room, Providence, Witness Sweet .....	I	327	Not printed	
7-Kellogg Package, Delivered September 2, 1932, Biltmore Hotel, Providence, Witness Sweet .....	I	327	...	...
8-Menu, September 2, 1932, Providence, Biltmore Hotel, Witness Sweet .....	I	327	Not printed	
9-Kellogg Carton, Served, Biltmore Hotel, Providence, September 1, 1932, Witness Sweet .....	I	328	IV	1
10-Old Style Carton, Shredded Wheat, Witness Schapansky (Saucer With Two Biscuit) .....	II	720*	IV	3
11-Kellogg Package, Grocery, Hamilton, Mass., Witness Sanborn .....	I	359*	IV	7
12-Kellogg Carton, Hawthorne Hotel, Salem, Mass., Witness Barrett .....	I	361*	...	...

\*Formal offer and admission of exhibit in evidence deleted in continuing record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
13—	Menu, Hawthorne Hotel, Salem, Mass., Witness Barrett .....	I 361*	Not printed
14—	Kellogg Package, Grocery, Salem, Mass., Witness Creedon .....	I 364*	... ..
15—	Kellogg Carton, Grocery, Castle Hill, Sa- lem, Witness McCabe .....	I 366*	... ..
16—	Kellogg Package, Biltmore Hotel, Provi- dence, Witness Doyle .....	I 388*	... ..
17—	Menu, Biltmore Hotel, Providence, Wit- ness Doyle .....	I 388	Not printed
18—	Large Kellogg Carton or Case, Burlington Grocery, Burlington (Photograph to Be Substituted), Witness Sharpley .....	I 400*	... ..
19—	Individual Kellogg Carton, Vermont Lunch, Burlington, Witness Thayer ..	I 406*	... ..
20—	Menu, Montpelier Tavern, Burlington, Vt., Witness Bradbury .....	I 408*	Not printed
21—	Individual Box Shredded Wheat With Kel- logg's Whole Wheat Biscuit Therein, Dorn's Cafe, Burlington, Vt., Witness Bradbury .....	I 409*	... ..
22—	Menu, Vermont Lunch, Burlington, Vt., Witness Bradbury .....	I 409*	Not printed
23—	Sales Slip, Duritsky's, Uniontown, Pa., Witness White .....	I 423	Not printed
24—	Kellogg Carton, Duritsky's, Uniontown, Pa., Witness White .....	I 423	... ..
25—	Sales Slip, H. L. Black Grocery, Juniata, Pa., Witness Colliflower .....	I 427	Not printed
26—	Kellogg Carton, H. L. Black Grocery, Juniata, Pa., Witness Colliflower .....	I 427	... ..
27—	Sales Slip, Huber's Grocery, Altoona, Pa., Witness Goodman .....	I 430	Not printed

\*Formal offer and admission of exhibit in evidence deleted, in con-  
densing record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
28	Kellogg Carton, Huber's Grocery, Altoona, Pa., Witness Goodman .....	I 430	... ..
29	Sales Slip, Witherow Store, Altoona, Pa., Witness Miller .....	I 433	Not printed
30	Kellogg Carton, Witherow Store, Altoona, Pa., Witness Miller .....	I 433	... ..
31	Kellogg Carton, Isaly's Dairy, Steubenville, Ohio, <del>Witness</del> Trescher .....	I 445	... ..
32	Kellogg Carton, Restaurant, East Liberty, Witness Borneman .....	I 446	... ..
33	Kellogg Box With Paper Attached, Isaly's Dairy, Steubenville, Ohio, Witness Keeder .....	I 451	... ..
34	Kellogg Carton, Kresge's, Steubenville, Ohio, Witness Keenan .....	I 452	... ..
35	Strip Display Sign, Showing Dish Con- taining Two Biscuit, Witness Nuber- meyer .....	I 454	Not printed
36	Glass Bowl, Witness Nubermeyer .....	I 454	... ..
37	Kellogg Carton, Restaurant, Cleveland, Ohio, Witness Fisher .....	I 463	... ..
38-A	Order Slip, Hammer Grocery, Cleveland, Witness Herron .....	I 464	Not printed
38-B	Kellogg Box, Hammer Grocery, Cleve- land, Witness Herron .....	I 464	... ..
39-A	Yellow Slip, Norris Grocery, E. Cleve- land, Witness Lansdowne .....	I 466	Not printed
39-B	Kellogg Carton, Norris Grocery, E. Cleveland, Witness Lansdowne .....	I 466	... ..
40-A	White Slip, Grocery, Lakeview Road, Cleveland, Witness Lansdowne .....	I 467	Not printed
40-B	Kellogg Box, Grocery, Lakeview Road, Cleveland, Witness Lansdowne .....	I 467	... ..
41-A	Yellow Sales Slip, Bob's Grocery, Cleve- land, Witness Schneider .....	I 469	Not printed



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted.		Printed	
		Vol.	Page	Vol.	Page
41-B	Kellogg Carton, Bob's Grocery, Cleveland, Witness Schneider .....	I	469	...	...
42-A	Sales Slip, "Y" Grocery, Cleveland, Witness Stibeling .....	I	470	Not printed	
42-B	Kellogg Carton, "Y" Grocery, Cleveland, Witness Stibeling .....	I	471	...	...
43	Carton, Kellogg's, Huff Restaurant, Cleveland, Witness Rohn .....	I	472	...	...
44	Kellogg Carton, Grocery Store, Detroit, Witness Bernard .....	I	481	...	...
45	Kellogg Carton, Cafe, Flint, Mich., Witness Harris .....	I	482	...	...
46	Kellogg Carton, Grocery Store, Detroit, Witness Yorke .....	I	483	...	...
47	Kellogg Carton, Grocery Store, Flint, Mich., Witness McClellan .....	I	485	...	...
48	Kellogg Carton, Grocery Store, Flint, Mich., Witness Meiloure .....	I	486	...	...
49	Kellogg Carton Victory Lunch, Detroit ..	I	490	...	...
50-A	Brown Paper Bag, Grocery Store, Detroit, Witness Cowles .....	I	492	...	...
50-B	Kellogg Carton, Grocery Store, Detroit, Witness Cowles .....	I	492	...	...
51	Kellogg Carton, Grocery Store, Detroit, Witness Westphal .....	I	493	...	...
52	G. & H. McMillan's Catalog, Detroit, Witness MacElroy .....	I	494	Not printed	
53-A	Slip, Menu Card, Restaurant, Chicago, Witness Michalak .....	I	499	Not printed	
53-B	Kellogg Carton, Restaurant, Chicago, Witness Michalak .....	I	499	...	...
54	Kellogg Carton, YMCA, Chicago, Witness Loughlin .....	I	502	...	...
55-A	Card, on Counter, Restaurant, Chicago, Witness Holmer .....	I	504	Not printed	



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted		Printed	
		Vol.	Page	Vol.	Page
55-3	Kellogg Carton, Restaurant, Chicago, Witness Holmer .....	I	504	...	...
56	Menu Card, Restaurant, Chicago, Witness Holmer .....	I	504	Not printed	
57	Kellogg Carton, Grocery Store, Chicago, Witness Ristig .....	I	512	...	...
58	Kellogg Carton, Food Shop, Chicago, Wit- ness Korsen .....	I	513	...	...
59	Kellogg Carton, Grocery Store, Chicago, Witness Rachlin .....	I	515	...	...
60	Kellogg Carton, Grocery Store, Chicago, Witness Ritter .....	I	516	...	...
61	Kellogg Package, Grocery Store, Chicago, Witness Golden .....	I	517	...	...
62	Kellogg Box, Davie's Lunch, Chicago, Witness Skewes .....	I	520	...	...
63	Kellogg Carton, Restaurant, Washington, D. C., Witness Kleeman .....	I	528	...	...
64	Kellogg Carton, Grocery Store, Hagers- town, Md., Witness Schmidt .....	I	533	...	...
65	Kellogg Box, Restaurant, Hagerstown, Md., Witness Schmidt .....	I	533	...	...
66	Bill From Restaurant, Hagerstown, Md., Witness Schmidt .....	I	533	Not printed	
67	Kellogg Box, Restaurant, Hagerstown, Md., Witness Schmidt .....	I	533	...	...
68	Bill, Marked One Box Shredded Wheat, Grocery Store, Chambersburg, Pa., Wit- ness Ludwig .....	I	534	Not printed	
69	Kellogg Box, Grocery Store, Chambers- burg, Pa., Witness Ludwig .....	I	535	...	...
70	Bill From Restaurant, Chambersburg, Pa., Witness Ludwig .....	I	535	Not printed	
71	Kellogg Box, Restaurant, Chambersburg, Pa., Witness Ludwig .....	I	535	...	...



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
72—	Sales Slip From Restaurant, Baltimore, Witness Johnson .....	I 549*	Not printed
73—	Kellogg Carton, Restaurant, Baltimore, Witness Johnson .....	I 549*	...
74—	Kellogg Package, Lull Grocery Store, Kal- amazoo, Mich., Witness Doyle .....	I 552*	...
75—	Kellogg Carton, Sunshine Grocery Com- pany, Kalamazoo, Mich., Witness Doyle .....	I 553*	...
76—	Kellogg Package, Grocery Store, Kalama- zoo, Mich., Witness Doyle .....	I 553*	...
77—	Kellogg Carton, Grocery Store, Kalama- zoo, Mich., Witness Doyle .....	I 553*	...
78—	Kellogg Carton, Grocery Store, Battl- Creek, Witness Doyle .....	I 553*	...
79—	Kellogg Carton, Grocery Store, Battle Creek, Witness Doyle .....	I 554*	...
80—	Kellogg Package, Grocery Store, South Norwalk, Conn., Witness Cavalier ....	I 612*	...
81—	Purchase Slip, Grocery Store, Stamford, Witness Tuttle .....	I 614*	Not printed
82—	Kellogg Carton, Grocery Store, Stamford, Witness Tuttle .....	I 614*	...
83—	Newspaper Schedules (Summary), Wit- ness DeWeese .....	I 571*	IV 11
84—	Compilation of Numerous Sheets Entitled "Advertising and Promotional Expense in the United States, Canada, and Eng- land," Witness DeWeese .....	I 571*	IV 41
85—	Paper, Letter, From Walter H. Page, Wit- ness DeWeese .....	I 572*	IV 43
86—	List of Publications Referring to Shredded Wheat, Witness DeWeese .....	I 572*	Not printed
87 to 112—	Books or Albums Containing Rec- ords of Shredded Wheat Advertising, Witness DeWeese .....	I 572*	Not printed

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.	Admitted		Printed	
	Vol.	Page	Vol.	Page
113—Kellogg Package, Grocery Store, New York, Witness Bender .....	I	618*	....	....
114—Sheets (Two), Figures From 1927 and 1928, Tables of Amounts Expended by Advertising Shredded Wheat, Witness Oliva .....	I	620*	IV	45
115—Sheets (Four), Showing Expenditures by Media From 1929 to 1932, Witness Oliva .....	I	620*	IV	48
116—Cut-out, Floor, Witness Oliva .....	I	621*	Not printed	
117—Cut-out, Witness Oliva .....	I	621*	Not printed	
118—Cut-out, Witness Oliva .....	I	621*	Not printed	
119—Four Price Cards, Witness Oliva .....	I	621*	Not printed	
120—Eight Carton Inserts, Witness Oliva .....	I	621*	Not printed	
121—Window Poster, Witness Oliva .....	I	621*	Not printed	
122—Three Sheet Poster, Witness Oliva .....	I	622*	Not printed	
123—Shopping Bag, Witness Oliva .....	I	622*	....	
124—Hanger Card, Witness Oliva .....	I	622*	Not printed	
125—Hanger Card, Witness Oliva .....	I	622*	Not printed	
126—Hanger Card, Witness Oliva .....	I	622*	Not printed	
127—Price Card, Witness Oliva .....	I	622*	Not printed	
128—Price Card, Witness Oliva .....	I	622*	Not printed	
129—Four Broad sides, Witness Oliva .....	I	622*	Not printed	
130—Recipe Book, Witness Oliva .....	I	622*	Not printed	
131—Restaurant Hanger, Witness Oliva .....	I	623*	Not printed	
132—Restaurant Menu, Witness Oliva .....	I	623*	Not printed	
133—Three Window Posters, Witness Oliva ....	I	623*	Not printed	
134—Window Posters, Witness Oliva .....	I	623*	Not printed	
135—Price Window Poster, Witness Oliva ....	I	623*	Not printed	
136—Panel Poster, Witness Oliva .....	I	623*	Not printed	
137—Postal Card, Witness Oliva .....	I	623*	Not printed	
138—Letter and Circular Distributed With Free Samples of Shredded Wheat, Witness Oliva .....	I	623*	Not printed	

\* Formal offer and admission of exhibit in evidence deleted in condensing record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
139—	Three Bundles of Sheets of Newspaper Schedules, Witness Oliva .....	I 624*	Not printed
140—	Kellogg Package, Restaurant, Newark, Witness Fagan .....	I 635*	...
141—	Kellogg Package, Grocery Store, New York, Witness Mund .....	I 638*	...
142—	Kellogg Package (in Part), Restaurant, Hampstead, Long Island, Witness Par- nell .....	I 641*	...
143—	Kellogg Package, Grocery Store, Seaford, Witness Tuthill .....	I 643*	...
144—	Kellogg Package, Grocery Store, Brook- lyn, Witness Evans .....	I 651*	...
145—	Kellogg Box, Cafeteria, Brooklyn, Witness Evans .....	I 652*	...
146—	Menu, Cafeteria, Brooklyn, Witness Evans	I 655*	Not printed
147—	Kellogg Box, Grocery Store, Witness Mc- Crum .....	I 656*	...
148—	New Carton, National Biscuit Co., Wit- ness Oliva .....	I 657*	...
149—	Transcript of Annual Sales of Shredded Wheat, Witness Dunlap .....	I 675*	IV 50
150—	Combined Schedule of Advertising Ex- penditures, Witness Dunlap .....	I 675*	IV 51
151—	Kellogg Carton, Cafeteria, New York, Witness MacKay .....	I 682*	...
152—	Kellogg Package, Restaurant, Fresno, Cal- ifornia, Witness Schapansky .....	II 716*	...
153—	Kellogg Package, Black's Package Store, Fresno, California, Witness Schapansky	II 717*	...
154—	Kellogg Carton, Grocery Store, With Sales Slip, Fresno, California, Witness Scha- pansky .....	II 718*	...

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted		Printed	
		Vol.	Page	Vol.	Page
154-A	Kellogg Carton, Hotel Berry, Coffee Shop, Sacramento, California, Witness Sowles .....	II	727*	...	...
155	Kellogg Carton, Grocery Store, Sacramento, California, Witness Sowles ....	II	727*	...	...
156	Menu Card, Smith's Coffee Cup, Stockton, California, Witness Burkner .....	II	732*	Not printed	
157	Kellogg Carton, Smith's Coffee Cup, Stockton, California, Witness Burkner .....	II	732*	...	...
158	Kellogg Carton, Foster's Lunch System, San Francisco, California, Witness Baird .....	II	736*	...	...
159	Kellogg Carton, Grocery, Berkeley, California, Witness MacCool .....	II	739*	...	...
160	Kellogg Carton and Purchase Slip, Miller's Store, Witness Fatjo .....	II	743*	...	...
161	Kellogg Package, Santa Clara, California, Witness Van Artsdale .....	II	767*	...	...
162	Menu, Steamship Line, Ross, California, Witness Mears .....	II	1196*	Not printed	
163	Menu, Ship Monterey, Ross, California, Witness Mears .....	II	1196*	Not printed	
164	Menu Card, Restaurant Owner, San Francisco, California, Witness Dubac .....	II	1235*	Not printed	
165	Kellogg Carton, Large Size, Burlingame, California, Witness West .....	II	1190*	...	...
166	Kellogg Carton, Burlingame, California, Witness West .....	II	1190*	...	...
167	Kellogg's Window Display Carton, Burlingame, California, Witness West ...	II	1191*	...	...
168	Kellogg's Window Display Carton, Burlingame, California, Witness West ....	II	1191*	...	...
169	Kellogg Carton, Restaurant Owner, Witness Lee .....	II	1255*	...	...

\*Formal offer and admission of exhibit in evidence deleted in consolidating record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
170—	Menu Card, With Paper Attached, Restaurant owner, Witness Fierstine .....	II 1259*	Not printed
171—	Kellogg Carton, Witness Cooper .....	II 776*	...
172—	Kellogg's Wheel of Knowledge, San Diego, California, Witness Cooper ....	II 776*	Not printed
173—	Kellogg Carton, Purchaser, San Diego, California, Witness Cooper .....	II 777*	...
174—	Kellogg Carton, Purchaser, Los Angeles, California, Witness MacFarland .....	II 783*	...
175—	Kellogg Carton, Los Angeles, California, Witness MacDuffie .....	II 787*	...
176—	Kellogg Carton, Purchaser, Los Angeles, California, Witness MacDuffie .....	II 787*	...
177—	Kellogg Carton, Purchaser, Glendale, California, Witness Anderson .....	II 792*	...
178—	Kellogg's Individual Carton, Witness Lierley .....	II 798*	...
179—	Kellogg Carton and Cash Slip, Witness Ruch .....	II 802*	...
180—	Clipping, Brownwood Bulletin, Kellogg Sales, Witness Wilde .....	II 1333*	Not printed
181—	Fort Worth Grocery Co., Price-List, Witness Wilde .....	II 1339*	Not printed
182—	Kellogg Carton, Witness Bullock .....	II 882*	...
183—	Kellogg Package, Witness Burke .....	II 884*	...
184—	Kellogg Carton, Cellophane Front, Witness Mahaffey .....	II 889*	...
185—	Kellogg Carton, Witness Tutt .....	II 900*	...
186—	Kellogg Carton, Witness Reynolds .....	II 902*	...
187—	Sales Slip, Witness Staloup .....	II 904*	Not printed
188—	Kellogg Carton, Witness Staloup .....	II 904*	...
189—	Slip of Paper, Witness Hunsaker .....	II 907*	Not printed
190—	Kellogg Carton, Witness Hunsaker .....	II 907*	...

\*Formal offer and admission of exhibit in evidence deleted in con-  
sidering record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.	Admitted		Printed	
	Vol.	Page	Vol.	Page
191—Kellogg Package, Witness Guthrie .....	II	936*	...	...
192—Kellogg Carton, Witness Guthrie .....	II	938*	...	...
193—Menu Card, Witness Guthrie .....	II	938*	Not printed	
194—Page of the Wichita Independent, Witness Guthrie .....	II	938	Not printed	
195—Kellogg Package, Witness Branson .....	II	943*	...	...
196—Purchase Slip, Witness Branson .....	II	943*	Not printed	
197—Page of the Winona Republican Herald, Dated January 20, 1933, Witness Kol- voord .....	III	1411*	Not printed	
198—Newspaper Advertisement of the Decatur Home Stores, Witness Kolvoord .....	III	1415*	Not printed	
199—Old-Style Kellogg Folder Cut, Witness Kolvoord .....	III	1415*	Not printed	
200—Newspaper Advertisement, Reading Eagle, April 28, 1932, Witness Kelly .....	III	1443*	Not printed	
201-A—Newspaper Clipping, Kalamazoo Ga- zette, Witness Mahan .....	III	1476*	Not printed	
201-B—Sheet, Containing Same, Kalamazoo Ga- zette, March 2, 1933; Newspaper Clip- ping, Witness Mahan .....	III	1476	Not printed	
202—Price-List Put Out by the Kellogg Com- pany, Dated February 1, 1933, Witness Mahan .....	III	1476*	IV	53
203—Paper Showing Picture of Kellogg's, Whole Wheat Biscuit Containing Two Biscuit in a Dish to Be Addressed to Store Managers, Witness Mahan .....	III	1477	IV	55
204—Tear Sheet From the Battle Creek, Michi- gan, Moon Journal, October 21, 1932, Witness Mahan .....	III	1477	Not printed	
205—Hand-Bill Used by I. G. A. Stores, Wit- ness Mahan .....	III	1477	Not printed	

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# PLAINTIFF'S EXHIBITS—Continued

Ex. No.	Admitted Vol. Page	Proffered Vol. Page
206—Sheet From the News Telegraph, Dated March 10, 1933, Sharon, Pa., Witness Ander .....	III 1638	Not proffered
207—Page Twenty-nine of the Pittsburgh Press, Dated March 25, 1932 .....	III 1638	Not proffered
208—Package of Hat Cleaner, Witness Rush .....	III 1637	
209—Package of Camel Cigarettes, Witness Rush .....	III 1638	
210—Copy of the Reading Eagle, May 5, 1932, Witness Miller .....	III 1846*	Not proffered
211—Page 5 of the Reading Eagle, February 4, 1932, Witness Miller .....	III 1846*	Not proffered
212—Sheet Containing Ad of the Kellogg Com- pany of the Reading Eagle, May 12, 1932, Witness Miller .....	III 1846*	Not proffered
213, 214—(Numbers Skipped, No Such Exhib- its Marked.)		
215—Package Resembling Plaintiff's Exhibit No. 166 (a Kellogg Shredded Whole Wheat Biscuit Carton), Witness Hop- kins .....	III 1871*	
216—Package Resembling Plaintiff's Exhibit No. 165, Witness Hopkins .....	III 1871*	
217—Cardboard Liner, Used by Kellogg Com- pany in Whole Wheat Biscuit Cartons, Witness Hopkins .....	III 1871*	
218—Easel or Study Advertising, Witness Hop- kins .....	III 1874*	Not proffered
219—Sheet of the Reading Eagle, March 11, 1932, Witness Hopkins .....	III 1875*	Not proffered
220—Sheet of the Reading Eagle, March 5, 1932, Witness Hopkins .....	III 1875*	Not proffered
221—Sheet of the Reading Eagle, March 17, 1932, Witness Hopkins .....	III 1875*	Not proffered

\*Formal offer and admission of exhibit in evidence deleted in re-  
cording record.



# PLAINTIFFS' EXHIBITS—Continued.

Ex. No.		Admitted		Printed	
		Vol.	Page	Vol.	Page
22	Copy of Modern Merchant and Grocery World, Witness Hopkins .....	III	1875*	Not printed	
23	Cash-and-Carry Bulletin, Witness Hopkins .....	III	1875*	Not printed	
24	William Montgomery & Co., Price-List, Witness Hopkins .....	III	1876*	Not printed	
25	Copy of Modern Merchant and Grocery World, February 9, 1933, Witness Hop- kins .....	III	1876*	Not printed	
26	Standard Government Form of Bid, Wit- ness Hopkins .....	III	1879	Not printed	
27	Price Bulletin of Provisional Contracts, Witness Hopkins .....	III	1879	Not printed	
28	Copies of Requisitions, Consisting of Six Sheets, Witness Ruckman .....	III	1912*	Not printed	
29	Advertisement, Minneapolis Journal, April 30, 1932, Witness Ruckman .....	III	1940*	Not printed	
30	Breakfast Menu, Hotel Paxton Coffee Shop, Witness Dubois .....	III	1947*	Not printed	
31	Menu, Main Dining-Room, Hotel Paxton, Witness Dubois .....	III	1947*	Not printed	
32	Room-Service Menu, Hotel Paxton, Wit- ness Dubois .....	III	1947*	Not printed	
33	Board of Control Specifications, Wit- ness Sawyer .....	III	1965*	Not printed	
34	Consolidation Agreement, Dated May 19, 1890, Witness Malone .....	II	958*	Not printed	
35	Copy of Certificate of Incorporation, Dated May 7, 1900, Witness Malone .....	II	978	Not printed	
36	Letter, Division Passenger Agent, Atchi- son, Topeka & Santa Fe Railway Co., April 13, 1933, Witness Malone .....	II	979	Not printed	
37	Certified Copy Resettled Final Decree in Shredded Wheat Company Against Humphreys Cornell Company .....	III	2005	IV	57

\*Original offer and admission of exhibit in evidence deleted in con-  
sensus record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.	Admitted Vol. Page	Printed Vol. Page
238—Menu Card, The Fenway Inn .....	I 251	Not printed
239—Photographs (24), Illustrating Plaintiff's Operations .....	I 271	IV 63
240—Box Diamond-Shape Biscuit .....	I 271	Not printed
240-A—Photograph of Two Biscuit of Plain- tiff's Exhibit No. 240 .....	III 2019	IV 111
241—Box of Cone-Shaped Biscuit .....	I 272	...
241-A—Photograph of Four Biscuit of Plain- tiff's Exhibit No. 241 .....	III 2019	IV 113
242—Box of Doughnut-Shaped Biscuit .....	I 273	...
242-A—Photograph of Two Biscuit of Plain- tiff's Exhibit No. 242 .....	III 2019	IV 115
243—Box of 3-inch Round-Cut Biscuit .....	I 274	...
243-A—Photograph of Two Biscuit of Plain- tiff's Exhibit No. 243 .....	III 2019	IV 117
244—Box of 2-inch Round-Cut Biscuit .....	I 274	...
244-A—Photograph of Three Biscuit of Plain- tiff's Exhibit No. 244 .....	III 2019	IV 119
245—Box of 3-inch Round-Moulded Biscuit ..	I 275	...
245-A—Photograph of Two Biscuit of Plain- tiff's Exhibit No. 245 .....	III 2019	IV 121
246—Box of Biscuit Baked in Automatic Ma- chine .....	I 276	...
247—Sheet Tampa Morning Tribune, July 9, 1932 .....	I 303	IV 123
248—Sheet The Tampa Daily Times, July 8, 1932 .....	I 303	IV 125
249—Sheet The Saint Paul Pioneer Press, April 26, 1933 .....	I 304	Not printed
250—Digest of Style for Government Printing ..	I 304*	...
251—Stipulation Re Depositions in Connecticut Case .....	I 306	IV 127
252—Four U. S. Trade-mark Registrations of Plaintiff .....	I 315	IV 129

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# PLAINTIFF'S EXHIBITS—Continued.

Ex. No.		Admitted		Printed	
		Vol.	Page	Vol.	Page
	No. 85,186, January 30, 1912 .....	I	315	IV	129
	No. 178,725, January 15, 1924 .....	I	315	IV	133
	No. 216,593, August 17, 1926 .....	I	315	IV	131
	No. 213,456, May 25, 1926 .....	I	315	V	135
253	Twenty-seven State Registrations of Trade-mark Shredded .....	I	315	Not printed	
254	Certificate of Incorporation, Natural Food Co. ....	II	1004	Not printed	
255	Certified Court Order Supreme Court, New York, Authorizing Change of Name to Shredded Wheat Company...	II	1005	Not printed	
256	Certificate of Organization National Bis- cuit Co. ....	II	1005	Not printed	
257	Amendment of Charter of National Bis- cuit Co. ....	II	1005	Not printed	
258	Second Amendment of Charter of National Biscuit Co. ....	II	1005	Not printed	
259	Third Amendment of Charter of National Biscuit Co. ....	II	1005	Not printed	
260	Bill of Sale, 30th April, 1930, From Shred- ded Wheat Company to National Biscuit Co. ....	II	1005	Not printed	
261	Carton Purchased at Kenosha on Decem- ber 24, 1932 .....	III	2018	.....	
262	Sketches A and B Used in Cross-Exam- ination of Witness Penty .....	II	1127	Not printed	
263	Report on Hot and Cold Cereals .....	II	1137	Not printed	
264	Report on Hot and Cold Cereals .....	II	1137	Not printed	
265	Slip Referred to by Witness Poole .....	II	1145	Not printed	
266	Package of Plaintiff's Reprocessed Bis- cuit .....	III	2018	.....	
267	Package of Plaintiff's Reprocessed Bis- cuit .....	III	2018	.....	
268	Package of Plaintiff's Biscuit, Part Re- processed .....	III	2018	.....	
269	Bundle of Photographs .....	III	2018	Not printed	



# **PLAINTIFF'S EXHIBITS—Continued.**

Ex. No.		Admitted Vol. Page	Printed Vol. Page
270—	Package Like Plaintiff's Exhibit 2, Kellogg's Shredded Whole Wheat Biscuit	III 2018	...
271—	Defendant's Carton Put Out September, 1932 .....	III 2018	...
272—	Carton Kellogg's Shredded Whole Wheat	III 2018	...
273—	Decree in Case of Natural Food Co. v. Bulkley, et al. ....	III 2020	Not printed
274—	Carton Champion Flake Butters .....	III 2024	...
275—	Dupont Company Price-List on Cellophane	III 2036	Not printed

## **PLAINTIFF'S EXHIBITS UNDER RULE 46.**

A—	Publication of the Cyrus Curtis Pub. Co. . .	III 2019	Not printed
B—	Opinion of the Court of Appeals in Williams Case* .....	III 2020	Not printed
C—	Decree of Court of Appeals in Williams Case .....	III 2020	Not printed



## DEFENDANT'S EXHIBITS.

Ex. No.	Admitted		Printed	
	Vol.	Page	Vol.	Page
1—Letter of Mr. Sweet .....	I	340	Not printed	
2—Letter of Mr. Sweet .....	I	340	Not printed	
3-A—Letter of Mr. Sweet .....	I	340	Not printed	
3-B—Letter of Mr. Sweet .....	I	340	Not printed	
4—Kellogg Carton, Witness Hamilton .....	I	357*	...	
5—Kellogg Carton, Witness Hamilton .....	I	357*	...	
6—Package Kellogg Whole Wheat Biscuit ..	I	495*	...	
7—Slip of Witness' Signature Torn Off Plain- tiff's Exhibit No. 54, Witness Loughlin	I	502*	Not printed	
8—Box or Carton, Kellogg's, Witness Dodge	I	531*	...	
9—Letter and Enclosure; News Release, Re: Suit Against Kellogg, Witness DeWeese	I	604	IV	137
10—Newspaper Article, Filing of Suit by Shredded Wheat Company, Witness DeWeese .....	I	604	IV	138
11—Quaker Muffetts Package, Witness Wein- stock .....	I	667*	...	
12—Package, Codfish, Witness West .....	II	1194*	...	
13—Package, Baker's Coconut, Witness West	II	1194	...	
14—Package, Kellogg's Whole Wheat Flakes, Witness West .....	II	1194*	...	
15—Package, Kellogg's Muffetts, Witness West	II	1194	...	
16—Triscuit Carton, Witness Powell .....	II	1266	...	
17—Wheat Krumbles Carton, Witness Thomp- son .....	II	1275*	...	
18—Poster, Wheel of Knowledge; Witness Thompson .....	II	1277*	Not printed	
19—Poster, Jumbo Kellogg Carton, Witness Thompson .....	II	1277*	Not printed	
20—Sheets, Ads, Witness Thompson .....	II	1278*	Not printed	
21—Kellogg's Corn Flakes, Witness Thompson	II	1285	...	
22—Kellogg's All-Bran, Witness Thompson ..	II	1285	...	
23—Kellogg's Pep, Witness Thompson .....	II	1285	...	

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.		Admitted Vol. Page	Printed Vol. Page
24—	Kellogg's Wheat Krumbles, Witness Thompson .....	II 1285	...
25—	Kellogg's Rice Krispies, Witness Thompson .....	II 1285	...
26—	Kellogg's Kaffee Hag, Witness Thompson .....	II 1285	...
27—	Kellogg's Wheat Krispies, Witness Thompson .....	II 1285	...
28—	(Number 1 Skipped, No Such Exhibit Marked.)		
29—	Kellogg's Whole Wheat Flakes, Witness Thompson .....	II 1285	...
30—	Package of Tear Sheets From San Francisco and Oakland Papers .....	I 775*	Not printed
31—	Package of Kellogg's All-Bran, Witness Anderson .....	II 1339*	...
32—	Package of Post's Whole Bran, Witness Anderson .....	II 1339*	...
33—	Package of Uneeda Graham Crackers, Witness Anderson .....	II 1339*	...
34—	Package of Brown's Graham Crackers, Witness Anderson .....	II 1339*	...
35—	Package of Sunshine Dutch Rush, Witness Anderson .....	II 1339*	...
36—	Package of Holland Rusk, Witness Anderson .....	II 1339*	...
37—	Package of Brown's Vanilla Wafers, Witness Anderson .....	II 1339*	...
38—	Package of Uneeda Vanilla Wafers, Witness Anderson .....	II 1339*	...
39—	Package of Van Camp's Spaghetti, Witness Anderson .....	II 1340*	...
40—	Package of Thrift Spaghetti, Witness Anderson .....	II 1340*	...

\*Formal offer and admission of exhibit in evidence deleted in condensing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.		Admitted Vol. Page	Printed Vol. Page
41—	Package of Swans Down Biscuit Mix, Witness Anderson .....	II 1340*	... ..
42—	Package of La France Biscuit Flour, Wit- ness Anderson .....	II 1340*	... ..
43—	Package of Uneeda Assorted Biscuit, Wit- ness Anderson .....	II 1340*	... ..
44—	Package of Sunshine Specialties Assort- ment, Witness Anderson .....	II 1340*	... ..
45—	Package of Baker's Cocoanut, Witness An- derson .....	II 1340*	... ..
46—	Package of Premier Spaghetti, Witness Anderson .....	II 1340*	... ..
47—	Package of Van Camp's Kidney Beans, Witness Anderson .....	II 1340*	... ..
48—	Package of Premier Beans and Pork, Wit- ness Anderson .....	II 1340*	... ..
49—	Package of Van Camp's Spaghetti, Witness Anderson .....	II 1340*	... ..
50—	Package of LaChoy Shredded Sprouts, Witness Anderson .....	II 1340*	... ..
51—	Package of Van Camp's Hominy, Witness Anderson .....	II 1340*	... ..
52—	Package of Beech-Nut Pork and Beans, Witness Anderson .....	II 1340*	... ..
53—	Package of Battle Creek Fig and Bran, Witness Anderson .....	II 1340*	... ..
54—	Package of Van Camp's Hominy, Wit- ness Anderson .....	II 1340*	... ..
55—	Package of Beech-Nut Spaghetti, Wit- ness Anderson .....	II 1340*	... ..
56—	Package of Baker's Sweet Potato Shred- dlets, Witness Anderson .....	II 1340*	... ..
57—	Package of Dunham's Original Shred Co- coanut, Witness Anderson .....	II 1340*	... ..

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.	Admitted Vol. Page	Printed Vol. Page
58—Package of Baker's Coconut Shredded, Witness Anderson .....	II 1340*	... ..
59—Package of National Shredded Wheat Bis- cuit, the Larger Individual Carton, Witness Baskett .....	II 1342*	... ..
60—Package of National Shredded Wheat Bis- cuit, the Smaller Individual Carton, Witness Baskett .....	II 1342*	... ..
61—Photograph of the Interior of the Wyatt Self-Service Store, Witness Baskett ...	II 1344	Not printed.
62—Package of Post Toasties, Corn Flakes ...	II 905*	... ..
63—Package of Genuine Egg Noodles .....	II 905*	... ..
64—Postal Card of Clover Farms Store, Reads, "Valuable Coupon," Witness Walters ..	III 1402*	Not printed
65—Jumbo Carton Display, Witness Kol- voord .....	III 1405*	... ..
66—Display Piece With Stand, Picturing a Sau- cer With Two Biscuit, Witness Kol- voord .....	III 1405*	... ..
67—Grocers' Display Piece Which Holds Car- ton Kellogg's Whole Wheat Biscuit, Witness Kolvoord .....	III 1406*	... ..
68—Sheet of Day Advertisements, Winona Re- publican Herald, January 20, 1933, Witness Kolvoord .....	III 1416	Not printed.
69-A and 69-B—Advance Sales Notice, Consist- ing of Two Sheets, Witness Chapelle..	III 1418*	Not printed
70—Package, Kellogg's, Witness Hatfield ....	III 1444*	... ..
71—Package of Shredded Wheat, Witness Hat- field .....	III 1444*	... ..
72—Individual Kellogg Package, Witness Tyler	III 1446*	... ..
73—Mat, Used in Newspapers in Printing, Wit- ness Kolvoord .....	III 1449*	... ..

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.

(x.)



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
74	Menu, Referring to Kellogg Carton, Wit- ness Miller .....	III 1454	... ..
75	Small Individual Kellogg Package, Wit- ness Gray .....	III 1529*	... ..
76	Kellogg Individual Package, Witness Gray	III 1529*	... ..
77	Older Package of Muffetts, Witness Lewis	III 1534*	... ..
78	Newer Package of Muffetts, Witness Lewis	III 1534*	... ..
79	Copy of Bid, Woman's Relief Corps Home, Witness Lewis .....	III 1536*	IV 142
80	Kellogg Package .....	III 1631	... ..
81	Shredded Wheat Package .....	III 1631	... ..
82	Forty-inch Advertisement, Martins Ferry, Witness Ander .....	III 1632*	Not printed
83	Large Set-up Window Photograph Display, Witness Ander .....	III 1633*	... ..
84	A Smaller Set-up Window Photograph Dis- play, Witness Ander .....	III 1633*	... ..
85	Copy of Bid, Tubercular Sanitarium, Cres- son, Pennsylvania (Department of Health) .....	III 1641*	Not printed
86	Copy of Bid, Specifies Kellogg's Whole Wheat Riscuit, Tubercular Sanitarium, Cresson, Pa., Witness Ander .....	III 1642*	Not printed
87	Copy of Bid, Pennsylvania Soldiers' and Sailors' Home, Witness Ander .....	III 1642*	Not printed
88	Package, Rippled Wheat, Witness Bell ...	II 954	... ..
89 and 90	Kellogg Deal Price Cards, Witness Mazman .....	III 1750*	... ..
91	Ross Carton, Witness Witherell .....	III 1764*	... ..
92	Chester Lowry's Blue Book Price List, Witness Bickham .....	III 1801*	Not printed
93	Camden Price List, Lowry's Blue Book, Witness Bickham .....	III 1801*	Not printed

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.	Admitted Vol. Page	Printed Vol. Page
94—Advertisement From Reading Eagle, February 4, 1932, Witness Miller .....	III 1841*	Not printed
95—Letters From National Biscuit Company to Jobbers, December 1, 1931, Witness Miller .....	III 1842*	IV 143
96 and 97—Two Circulars Carrying Advertisements of Kellogg's Whole Wheat Biscuit, Witness Moyer .....	III 1850*	Not printed
98—Story Book of Games, Witness Hopkins ..	III 1863*	Not printed
99—Wheel of Knowledge Chart, Witness Hopkins .....	III 1863*	Not printed
100-A—File Copy of Standard Government Form of Bid, for Use by Navy Department, for Supply Department, U. S. Naval Air Station, Lakehurst, N. J., Witness Hopkins .....	III 1866	Not printed
100-B—Standard Government Form of Bid, by Navy Department, U. S. Navy Yard, Washington, D. C., Witness Hopkins ..	III 1866	Not printed
101—Standard Form of Bid, Dated January 12, 1933, U. S. Naval Air Station, Lakehurst, N. J., Witness Hopkins .....	III 1866	Not printed
102—Federal Standard Stock Catalogue, N-C-191, Witness Hopkins .....	III 1868	Not printed
103—Small Kellogg Carton, Purchased on Dining Car, Northwestern Railroad .....	III 1944*	...
104—Letter to the Kellogg Co. From the F. H. Cobb Co., Inc., Cortland, N. Y., Dated March 22, 1933, an Addendum to the Testimony of Mr. A. J. Twentymen ..	III 1952*	Not printed
105—Case Used for Packing National Shredded Wheat, Witness Sawyer .....	III 1957*	...
106—Sketch, Diagram of Threads, Witness Malone, Made by Mr. Clarke .....	II 963	Not printed

\*Formal offer and admission of exhibit in evidence deleted in condensing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.		Admitted Vol. Page	Printed Vol. Page
107—Sketch Diagram of Threads, Made by Witness Malone .....	II	963*	Not printed
108—Photostatic Copy of Ad in the Denver Re- publican, Dated March 11, 1894, Wit- ness Hurd .....	II	974	IV 145
109—Certificate of Incorporation Colorado Shredded Wheat, January 25, 1895, Witness Hurd .....	II	977*	Not printed
110-A and 110B—Government Bid, Fort Logan, Dated April 11, 1933, Witness Copeland	III	1989*	Not printed
111—Package of Egypt Stick Candy .....	III	1990	...
112—Second Sheet, Page Five, Denver Times, March 17, 1894 .....	III	1990	Not printed
113—Second Sheet, Page Five, Denver Times, March 10, 1894 .....	III	1990	Not printed
114—Third Sheet, Page Eight, Daily News, Den- ver, Colorado, July 17, 1895 .....	III	1990	Not printed
115—Fourth Sheet, Page Eight, Daily News, Denver, Colorado, July 14, 1895 .....	III	1990	Not printed
116—Fifth Sheet, Page Eight, Daily News, Den- ver, Colorado, July 27, 1895 .....	III	1990	Not printed
117—Sixth Sheet, Page Eight, Daily News, Denver, Colorado, July 7, 1895 .....	III	1991	Not printed
118—Seventh Sheet, Page Eight, Daily News, Denver, Colorado, July 10, 1895 .....	III	1991	Not printed
119—Eighth Sheet, Page Eight, Daily News, Denver, Colorado, July 28, 1895 .....	III	1991	Not printed
120—Copy of Record in the Case of Shredded Wheat vs. The Humphrey-Cornell Co. and Frederick H. Towne, Witness Ross	III	1992	Not printed
121—Photostatic Certified Copy of Majority Opinion of the U. S. Circuit Court of Appeals, Witness Ross .....	III	1992	IV 147
122—Copy of Petition for Rehearing, Witness Ross .....	III	1993	IV 159

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.	Admitted Vol. Page	Printed Vol. Page
123—Kellogg Carton Used From About 1910 to 1912, Witness Ross .....	III 1999*	... ..
124—Kellogg Carton Used From 1913 to 1914 to Some Time in 1915, Front Panel of Carton Entitled Kellogg's Toasted Wheat Biscuit, Witness Ross .....	III 2000*	... ..
125—Kellogg Carton Used From 1915 Until 1918 (About) or 1919, Front Face Reads "Copyright 1910 by Kellogg's Toasted Corn Flakes Co.," Witness Ross .....	III 2000*	... ..
126—Certified Copy of Mandate, Witness Ross	III 2005	IV 163
127—Shredded Wheat Company Chart, "Educational Exhibit of Shredded Wheat Biscuit" .....	I 288*	Not printed
128—Book of Labels Illustrative of Jordan Testimony .....	II 1002	Not printed
129—Book of 1929 Newspaper Advertising .....	II 1003	Not printed
129-A—Book of 1928 Newspaper Advertising ...	II 1003	Not printed
129-B—Book of 1929 Newspaper Advertising ...	II 1003	Not printed
129-C—Book of 1930 Newspaper Advertising ...	II 1004	Not printed
129-D—Book of 1931 Newspaper Advertising ...	II 1004	Not printed
129-E—Book of 1932 Newspaper Advertising ...	II 1004	Not printed
130—Board Containing Samples of Defendant's Cartons, Marked A to R .....	II 1006	... ..
131—Holder Containing Kellogg Poster Advertising Before Suit Brought .....	II 1016	... ..
132—Packages Prepared by Witness Jordan ...	II 1016	... ..
133—Form Letter to Newspapers Re Kellogg Advertisements .....	II 1016	Not printed
134—Five Bundles of Retailer Advertisement of Kellogg's Whole Wheat Biscuit .....	II 1016	Not printed
135—Bundle of Retailer Advertisements of Kellogg's Shredded Wheat Biscuit .....	II 1016	Not printed

\*Formal offer and admission of exhibit in evidence deleted in condensing record.



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.	Admitted Vol. Page	Printed Vol. Page
136—Bundle of Retailer Advertisements of Kellogg's Shredded Wheat .....	II 1017	Not printed
137—Bundle of Retailer Advertisements of Kellogg's Shredded Wheat .....	II 1017	Not printed
138—Batch of Advertisements of Plaintiff .....	II 1025	Not printed
139—Odd Advertisements of Plaintiff in Woman's Home Companion .....	II 1035	Not printed
140—Plaintiff's Pamphlet "Uneeda" .....	II 1035	Not printed
141—Standard Government Form of Bid, Department of Interior .....	II 1043	Not printed
142—Federal Specification for Cereals (Breakfast Foods) .....	II 1043	Not printed
143—Defendant's Bid Naval Supply Department, Norfolk, Va., May 16, 1933 .....	II 1044	Not printed
144—Defendant's Bid Naval Supply Depot, Norfolk, Va., March 15, 1933 .....	II 1045	Not printed
145—Samples of Defendant's Early Advertisements of Kellogg's Toasted Wheat Biscuit .....	II 1047	Not printed
146—Early Carton of Kellogg's Shredded Whole Wheat Biscuit .....	II 1048	.....
147—Blank Carton Sanitas Toasted Corn Flakes .....	II 1050	.....
148—Advertisements Kellogg's Shredded Krumbles .....	II 1052	Not printed
149—Carton of Kellogg's Krumbles, Shredded Whole Wheat .....	II 1053	.....
150—Carton Kellogg's Wheat Krumbles .....	II 1053	.....
151—Carton Kellogg's Wheat Krumbles (U. S.) .....	II 1058	.....
152—Letter May 3, 1933, N. A. Relfrich to Kellogg's Sales Co. ....	II 1059	Not printed
153—Proposal April 8, 1933, to Navy Purchasing Officer, New York .....	II 1060	Not printed
154—Price Bulletin of Provision Contract for May, 1933, Port of New York .....	II 1061	Not printed



# **DEFENDANT'S EXHIBITS—Continued**

Ex. No.		Admitted Vol. Page	Printed Vol. Page
155—	Bid March 2, 1933, Navy Purchasing Office, New York .....	II 1062	Not printed
156—	Bid June 8, 1932, Naval Air Station, Lake- hurst, N. J. ....	II 1062	Not printed
157—	Bid February 23, 1933, Selfridge Field, Mich. ....	II 1063	Not printed
158—	Bid May 9, 1933, West Point, N. Y. ....	II 1063	Not printed
159—	Invitation for Bid August 22, 1932, Vet- erans Administration Home, National Military Home, California .....	II 1064	Not printed
160—	Invitation for Bids, October 25, 1932, Vet- erans Administration, Washington, D. C. ....	II 1064	Not printed
161—	Invitation for Bids, October 25, 1932, U. S. Marine Hospital, St. Louis, Mo. ....	II 1064	Not printed
162—	Bid March 21, 1932, Fort Benjamin Harri- son, Ind. ....	II 1065	Not printed
163—	Bid September 8, 1932, Fort Hoyle, Md. ....	II 1065	Not printed
164—	Invitation for Bids, May 19, 1932, U. S. Property and Disbursing Officer, Tren- ton, N. J. ....	II 1065	Not printed
165—	Bids January 9, 1932, The Army War Col- lege, Washington, D. C. ....	II 1065	Not printed
166—	Bid August 18, 1932, Fort Montrie, S. C. ....	II 1066	Not printed
167—	Bid November 11, 1932, Langley Field, Va. ....	II 1066	Not printed
168—	Bid January 19, 1933, Fort Crook, Neb. ....	II 1066	Not printed
169—	Bid March 25, 1933, Fort McClellan, Ala. ....	II 1066	Not printed
170—	Bid April 4, 1932, Fort Mason, San Fran- cisco, Cal. ....	II 1066	Not printed
171—	Bid July 21, 1931, Fort Warden, Wash. ....	II 1067	Not printed
172—	Bid July 13, 1932, Quartermaster Supply Officer, Brooklyn, N. Y. ....	II 1067	Not printed
173—	Bid Marine Barracks, Navy Yard, Ports- mouth, N. H. ....	II 1068	Not printed
174—	Invitation for Bids, Pennsylvania Depart- ment of Health, Sanitarium No. 2, Cres- son, Pa. ....	II 1068	Not printed



# **DEFENDANT'S EXHIBITS--Continued**

Ex. No.	Admitted		Printed	
	Vol.	Page	Vol.	Page
75--Specification for Cereals, Pa., December 10, 1932 .....	II	1069	Not printed	
76--Specifications State of South Dakota .....	II	1069	Not printed	
77--Request for Bids, December 19, 1932, Maine .....	II	1070	Not printed	
78--Proposal, Rockland State Hospital, Orangeburg, N. Y. ....	II	1070	Not printed	
79--Invitation for Bids, March 13, 1933, Tennessee .....	II	1070	Not printed	
80--Order April 1, 1933, Wassaic State School, Wassaic, N. Y. ....	II	1071	Not printed	
81--Order January 16, 1933, Newark State School, Newark, N. J. ....	II	1071	Not printed	
82--Order March 23, 1933, Great Meadow Prison, Comstock, N. Y. ....	II	1071	Not printed	
83--Order January 14, 1933, Willard State Hospital, Willard, N. Y. ....	II	1071	Not printed	
84--Specifications Division of Purchases and Supplies, Springfield, Ill. ....	II	1072	Not printed	
85--Individual Carton Kellogg's Whole Wheat Biscuit .....	II	1072		
86--Large Carton Kellogg's Whole Wheat Biscuit .....	II	1072*		
87--Menu Card, Chicago, Milwaukee, St. Paul and Pacific .....	II	1074	Not printed	
88--Menu Card, Hotel Fort Shelby, Detroit, Mich. ....	II	1075	Not printed	
89--Bd March 13, 1933, Naval Supply Depot, Norfolk, Va. ....	II	1088	Not printed	
90--Bd February 11, 1933, U. S. Marine Corps, Navy Building, Washington, D. C. ....	II	1089	Not printed	
91--Bd of Price Brothers, May 18, 1933, Naval Home, Philadelphia, Pa. ....	II	1091	Not printed	
92--Plaintiff's Individual Carton, Large Biscuit .....	II	1098		
93--Blueprint Diagrammatic Sketch Defendant's Mill .....	II	1107	Not printed	

\*Formal offer and admission of exhibit in evidence deleted in closing record.



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.	Admitted Vol. Page	Printed Vol. Page
194—Photographs (13) Illustrating Defendant's Operation .....	II 1111	Not printed
195—Sample of Shreds First Time Through Rolls .....	II 1116	...
196—Sample of Shreds Second Time Through Rolls .....	II 1116	...
197—Sample of Shreds Third Time Through Rolls .....	II 1116	...
198—Carton of Fifteen Biscuit at 400 Degrees 1½ Hours .....	II 1117	...
199—Sample of Biscuit With Brown Band .....	II 1122	...
200—Sample of Biscuit With Green Band .....	II 1122	...
201—Sample of Biscuit With K Stamped Thereon	II 1123	...
202—Sample of Biscuit With Red Food Coloring	II 1123	...
203—Sample of Biscuit With Brown Food Color- ing .....	II 1124	...
204—Sample of Biscuit With Green Strip on Top .....	II 1124	...
205—Sample of Biscuit With Green Strip on Bottom .....	II 1124	...
206—Sample of Biscuit With K Impressed Thereon .....	II 1125	...
207—Sample of Biscuit With Brown Stripes ...	II 1125	...
208—Sample of Biscuit With K Impressed Thereon .....	II 1125	...
209—Biscuit as Shown, Sketch A Attached to Exhibit 262 .....	II 1130	...
210—Sample Diamond Shape Biscuit .....	II 1179	...
211—Sample Diamond Shape Biscuit .....	II 1179	...
212—Sample Biscuit With Band of Paper .....	II 1139	...
213—Sample Biscuit With Tag .....	II 1140	...
214—Sample Biscuit Enclosed in Envelope ....	II 1140	...
215—Large Card Carrying Samples of Plain- tiff's and Defendant's Cartons .....	II 1151*	...

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.	Admitted		Printed	
	Vol.	Page	Vol.	Page
216—Large Card Carrying Samples of Cartons of Defendant's Cereal Products .....	II	1151*	...	...
217—Defendant's Shipping Container Case No. 360 .....	II	1152	...	...
218—Defendant's Shipping Container Case No. 324 .....	II	1152	...	...
219—Window Display Card of Plaintiff .....	II	1152	...	...
220—Samples of Defendant's Cartons .....	II	1153	...	...
221—Photographs (2) of Store Displays .....	II	1153	Not printed	
222—Letter June 2, 1932, C. K. Brace, Manager, National Biscuit Co., Denver, Col., to All Jobbers .....	II	1154	IV	169
223—Chart of Kellogg's Shredded Wheat Bis- cuit Cartons .....	II	1155	Not printed	
224—Three Cartons Kellogg's Shredded Krum- bles .....	II	1155	...	...
225—Advertisement Chicago Daily Tribune, June 2, 1928 .....	II	1155	Not printed	
226—Advertisement The Battle Creek Moon Journal, May 25, 1922 .....	II	1156	Not printed	
227—Open Letter of Plaintiff to "Dear Madam" .....	II	1157	Not printed	
228—Carton Complimentary Samples Shredded Whole Wheat .....	II	1157	...	...
229—Pamphlet Fifty Ways of Serving Shredded Whole Wheat .....	II	1157	Not printed	
230—Recipes for New and Delicious Energy Dishes .....	II	1157	Not printed*	
231—Carton Kellogg's Battle Creek Shredded Wheat .....	II	1158	...	...
232—Registration No. 276,592, Battle Creek, Shredded Wheat .....	II	1158	Not printed	
233—Chamber's Journal, January 27, 1900 .....	II	1158	Not printed	

\*Formal offer and admission of exhibit in evidence deleted in con-  
densing record.



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
234—	File Wrapper and Contents, Trade-mark Registration No. 178,725, Shredded Wheat .....	II 1159	IV 171
235—	File Wrapper and Contents, Trade-Mark Registration No. 213,456 Shredded Wheat .....	II 1159	IV 181
236—	Book of Trade-Mark Registrations of Plaintiff .....	II 1160	IV 193
237—	Collection of Correspondence .....	II 1161	Not printed
238—	Samples of Shredded Paper, Shredded Gel- atine and Shredded Cellophane .....	II 1161	... ..
239—	Reproduction of Kellogg Biscuit Prior to 1920 .....	II 1162	Not printed
240, 240-A, 240-B—	Box of Split Peas, Lima Beans and Pop Corn, With Cellophane Windows .....	II 1163	... ..
241—	Advertisements in Grocery World, Five Sheets .....	II 1165	Not printed
242—	Perky U. S. Patent No. 548,086, October 15, 1895 .....	II 1166	IV 207



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.		Admitted Vol. Page	Printed Vol. Page
242—Book of Patents Issued to Plaintiff, Viz.:			
	Perky & Ford U. S. Patent No. 502,378, August 1, 1893 .....	II 1166	V 1
	Perky U. S. Patent No. 520,496, May 29, 1894.....	II 1166	V 5
	Perky U. S. Patent No. 532,286, Janu- ary 8, 1895 .....	II 1166	V 11
	Perky U. S. Patent No. 532,480, Janu- ary 15, 1895 .....	II 1166	V 15
	Perky U. S. Patent No. 532,481, Janu- ary 15, 1895 .....	II 1166	V 21
	Perky U. S. Patent No. 532,697, Janu- ary 15, 1895 .....	II 1166	V 25
	Perky U. S. Patent No. 532,698, Janu- ary 15, 1895 .....	II 1166	V 29
	Perky U. S. Patent No. 533,551, Febru- ary 5, 1895 .....	II 1166	V 33
	Perky U. S. Patent No. 533,552, Febru- ary 5, 1895 .....	II 1166	V 37
	Perky U. S. Patent No. 533,553, Febru- ary 5, 1895 .....	II 1166	V 41
	Perky U. S. Patent No. 533,554, Febru- ary 5, 1895 .....	II 1166	V 45
	Perky U. S. Patent No. 533,555, Febru- ary 5, 1895 .....	II 1166	V 49
	Montgomery U. S. Patent No. 533,821, February 5, 1895 .....	II 1166	V 55
	Perky U. S. Patent No. 548,086, Octo- ber 15, 1895 .....	II 1166	V 59
	Perky U. S. Design, Patent No. 24,688, September 17, 1895 .....	II 1166	V 61
	Perky U. S. Patent No. 571,284, Novem- ber 10, 1896 .....	II 1166	V 65
	Perky U. S. Patent No. 598,745, Febru- ary 8, 1898 .....	II 1166	V 77



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.		Admitted		Printed	
		Vol.	Page	Vol.	Page
	Perky U. S. Patent No. 614,338, November 15, 1898 .....	II	1166	V	81
	Perky U. S. Patent No. 618,288, January 24, 1899 .....	II	1166	V	87
	Perky U. S. Patent No. 667,892, February 12, 1901 .....	II	1166	V	91
	Perky U. S. Patent No. 678,127, July 9, 1901 .....	II	1166	V	109
	Perky U. S. Patent No. 678,625, July 16, 1901 .....	II	1166	V	121
	Perky U. S. Patent No. 681,656, August 27, 1901 .....	II	1166	V	135
	Burbank U. S. Patent No. 683,100, September 24, 1901 .....	II	1166	V	143
	Burbank U. S. Patent No. 683,101, September 24, 1901 .....	II	1166	V	149
	Burbank U. S. Patent No. 684,789, October 22, 1901 .....	II	1166	V	155
	Burbank U. S. Patent No. 685,671, October 29, 1901 .....	II	1166	V	165
	Perky U. S. Patent No. 713,795, November 18, 1902 .....	II	1166	V	169
	Perky U. S. Patent No. 746,145, December 8, 1903 .....	II	1166	V	173
	Burbank U. S. Patent No. 770,159, September 13, 1904 .....	II	1166	V	181
	Horner U. S. Patent No. 785,554, March 21, 1905 .....	II	1166	V	189
	Perky U. S. Patent No. 797,604, August 22, 1905 .....	II	1166	V	201
	Smith U. S. Patent No. 1,195,114, August 15, 1916 .....	II	1166	V	225
	Anderson U. S. Patent No. 1,334,429, March 23, 1920 .....	II	1166	V	231
	House U. S. Patent No. 1,592,768, July 13, 1926 .....	II	1166	V	243



# DEFENDANT'S EXHIBITS—Continued.

Ex. No.	Admitted Vol. Page	Printed Vol. Page
Webster U. S. Patent No. 1,592,797, July 13, 1926 .....	II 1166	V 301
Anderson U. S. Patent No. 1,621,863, March 22, 1927 .....	II 1166	V 313
243—Valentine U. S. Patent No. 831,909, Sep- tember 25, 1906 .....	II 1166	V 319
244—Book of Patents Issued to Defendant, Viz.: Valentine U. S. Patent No. 1,102,614, July 7, 1914 .....	II 1166	V 331
Kellogg U. S. Patent No. 1,159,045, November 2, 1915 .....	II 1166	V 355
Kellogg U. S. Patent No. 1,189,130, June 27, 1916 .....	II 1166	V 357
Kellogg U. S. Patent No. 1,197,297, September 5, 1916 .....	II 1166	V 361
Kellogg U. S. Patent No. 1,783,434, December 2, 1930 .....	II 1166	V 361
Hanford U. S. Patent No. 1,091,509, March 31, 1914 .....	II 1166	V 373
Valentine U. S. Patent No. 1,124,363, January 12, 1915 .....	II 1166	V 411
Valentine U. S. Patent No. 1,143,151, June 15, 1915 .....	II 1166	V 417
245—Book of Miscellaneous Patents Issued to Others Than Plaintiff or Defendant, Viz.: Cooley U. S. Patent No. 782,109, Feb- ruary 7, 1905 .....	II 1167	V 437
Williams U. S. Patent No. 820,899, May 15, 1906 .....	II 1167	V 441
Williams U. S. Patent No. 878,262, Feb- ruary 4, 1908 .....	II 1167	V 445
Williams U. S. Patent No. 896,964, Au- gust 25, 1908 .....	II 1167	V 451
Williams U. S. Patent No. 897,182, Au- gust 25, 1908 .....	II 1167	V 455



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.		Admitted		Printed	
		Vol.	Page	Vol.	Page
	Williams U. S. Patent No. 931,243, August 17, 1909 .....	II	1167	V	459
	Williams U. S. Patent No. 949,013, February 15, 1910 .....	II	1167	V	469
	Williams U. S. Patent No. 991,584, May 9, 1911 .....	II	1167	V	489
	Williams U. S. Patent No. 1,024,168, April 23, 1912 .....	II	1167	V	493
	Williams U. S. Patent No. 1,062,627, May 27, 1913 .....	II	1167	V	505
	Black U. S. Patent No. 1,210,589, January 2, 1917 .....	II	1167	V	511
	Williams U. S. Patent No. 1,263,009, April 16, 1918 .....	II	1167	V	513
246—	Bid of Plaintiff May 8, 1933, Department of Interior, Washington, D. C. ....	II	1170	Not printed	
247—	Bid of Plaintiff December 12, 1932, U. S. Marine Corps, Washington, D. C. ....	II	1171	Not printed	
248—	Bid of Plaintiff March 17, 1933, U. S. Marine Corps, Washington, D. C. ....	II	1172	Not printed	
249—	Bid of Defendant February 3, 1933, Marine Barracks, Dover, N. J. ....	II	1172	Not printed	
250—	Advertisement, The Natural Food Co. in New York Daily Tribune, May 12, 1907	II	1176	Not printed	
251—	Advertisement, The Shredded Wheat Co. in Trade, Detroit, April 9, 1913 .....	II	1176	Not printed	
252—	Package of Arrowroot Biscuits .....	II	1177	Not printed	
253—	Package of Fig Newtons Biscuits .....	II	1177	Not printed	
254—	Package of Hydrox Biscuits .....	II	1177	Not printed	
255—	Certificate of Incorporation of The Colorado Shredded Wheat Co. ....	II	1177	Not printed	
256—	Carton of Kellogg's Corn Flakes .....	II	1178	Not printed	
257—A—	Clarke Sketch of Cutting of Diamond-Shape Biscuit .....	II	1178	Not printed	



# **DEFENDANT'S EXHIBITS—Continued.**

Ex. No.	Admitted		Printed	
	Vol.	Page	Vol.	Page
258—Chart Illustrating Cartons of Plaintiff's Wheat Biscuit and Triscuit .....	II	1179	Not printed	
259—Box Plaintiff's Butter Thin Biscuit .....	III	2035	...	...
260—Box Plaintiff's Uneeda Biscuit .....	III	2035	...	...
261—Box Plaintiff's Graham Crackers .....	III	2035	...	...
262—Box Plaintiff's Premium Flake Crackers ..	III	2035	...	...

## **DEFENDANT'S EXHIBIT UNDER RULE 46.**

A—Proceedings in the Patent Office .....	MI	2021	Not printed	
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PLAINTIFF'S EXHIBIT NO. 9.

35/1/6

*Kellogg's*  
**WHOLE WHEAT  
BISCUIT**

Are delicious served with hot or cold milk or cream; and a special treat with berries, peaches, prunes, bananas or other fresh or preserved fruits. Add sugar or salt to suit taste—or sweeten with honey.

Kellogg's **WHOLE WHEAT** Biscuit contains practically all the food value of entire wheat, including the natural bran. Two biscuits and a bowl of milk will supply about half the average person's daily requirements of both calcium and phosphorus and one-fourth the iron necessary, as well as many other minerals.

*Kellogg's*  
**WHOLE WHEAT  
BISCUIT**

**DOUBLE TOASTED—A DELICIOUS  
CEREAL MADE OF WHOLE WHEAT**

THE ORIGINAL HAS THIS SIGNATURE

*H. K. Kellogg*

**KELLOGG COMPANY  
BATTLE CREEK, MICHIGAN**

(CASE NO. 588) NET WEIGHT 1½ OUNCES

4-32-F

Only products of the very highest quality  
are made by the

**KELLOGG COMPANY**

**BATTLE CREEK, MICHIGAN**

LONDON, ENGLAND LONDON, CANADA SYDNEY, AUSTRALIA



10-1/2  
 06-25-27  
 271

451-1111

**Kellogg's**

**WHOLE WHEAT BISCUIT**

This certified analysis made by the Medical Arts Laboratory of Philadelphia, indicates the splendid food value of Kellogg's Shredded **WHOLE WHEAT Biscuit**.

Carbohydrates	77.31%	Minerals	1.19%
Protein	11.97%	Fiber	2.40%
Fat	1.90%	Molasses	1.17%

**MINERALS**

Calcium	1.30%	Sodium	1.25%
Iron	.27%	Chloride	1.60%
Copper	.002%	Phosphorus	68.17%
Magnesium	18.13%	Sulfur	1.50%
Potassium	11.10%	Silica	.30%

Kellogg's **WHOLE WHEAT Biscuits** when served with milk or cream contain six vitamins, A, B, C, D, E and G.

*Certified*

**FOR**

**FOOD  
VALUE**



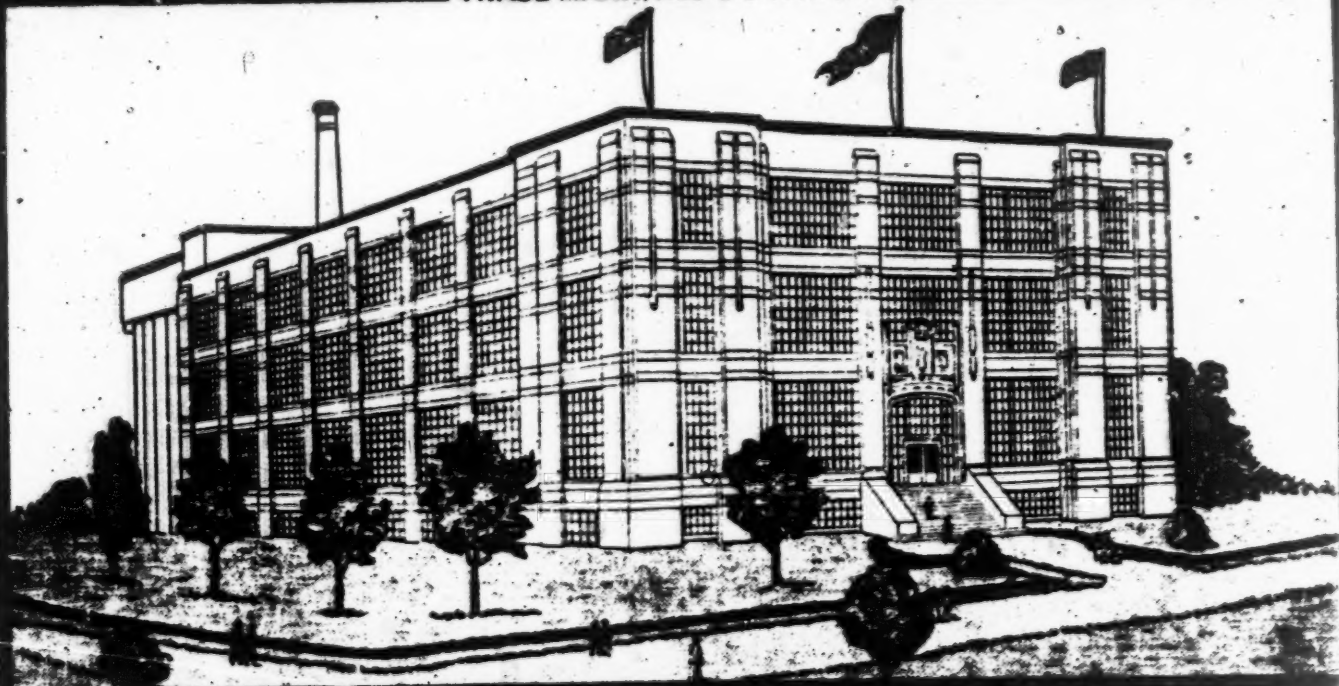


# WHOLE WHEAT

HANDLE WITH CARE.

# SHREDDED WHEAT

TRADE MARK, REG. U.S. PAT. OFF



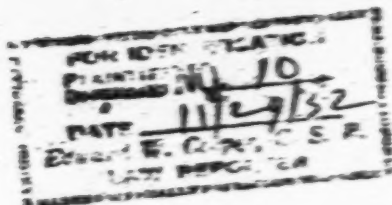
**THE SHREDDED WHEAT FACTORY**  
**THE CLEANEST, MOST SANITARY FOOD FACTORY IN THE WEST**  
**THE PACIFIC COAST SHREDDED WHEAT CO., OAKLAND, CALIFORNIA**

COPYRIGHT 1926, BY THE SHREDDED WHEAT COMPANY

HANDLE WITH CARE.

# WHOLE WHEAT



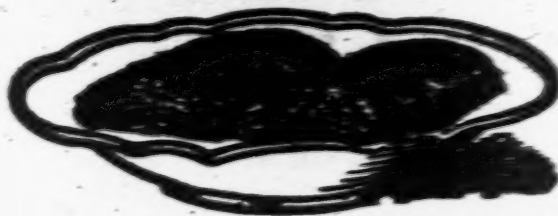


AT  
AT  
NET WEIGHT, 12 OUNCES  
METRIC EQUIVALENT 340 GRAMMES

(TRADE-MARK)

# SHREDDED WHEAT

REG. U.S. PAT. OFF



AS MADE FOR 30 YEARS  
"IT'S ALL IN THE SHREDS"

COPYRIGHT 1928 BY THE SHREDDED WHEAT COMPANY

WEST  
LIFORNIA



SHREDDED  
HANDLE WITH CARE  
OPEN HERE

# SHREDDED WHEAT

TRADE MARK. REG. U.S. PAT. OFF.

Made of the whole wheat—nothing added, nothing taken away. Contains, in a digestible form, all the elements for building muscle, bone and brain. Ready-cooked ready-to-eat.

## ALL THE BRAN IN THE WHEAT

SHREDDED WHEAT is an all-day food, equally nourishing for breakfast, for lunch, for dinner. Delicious with berries, sliced bananas, or other fruits.

To make a hot dish, heat the Biscuits in oven to restore crispness, then pour hot milk over them, adding a little cream. Salt or sweeten to suit the taste.

HEAT THE BISCUIT IN OVEN TO RESTORE CRISPNESS

12 Biscuits    12 Ounces  
Shredded Whole Wheat

COPYRIGHT 1926, BY THE SHREDDED WHEAT COMPANY

HANDLE WITH CARE.

# SHREDDED

OPEN HERE

# AT

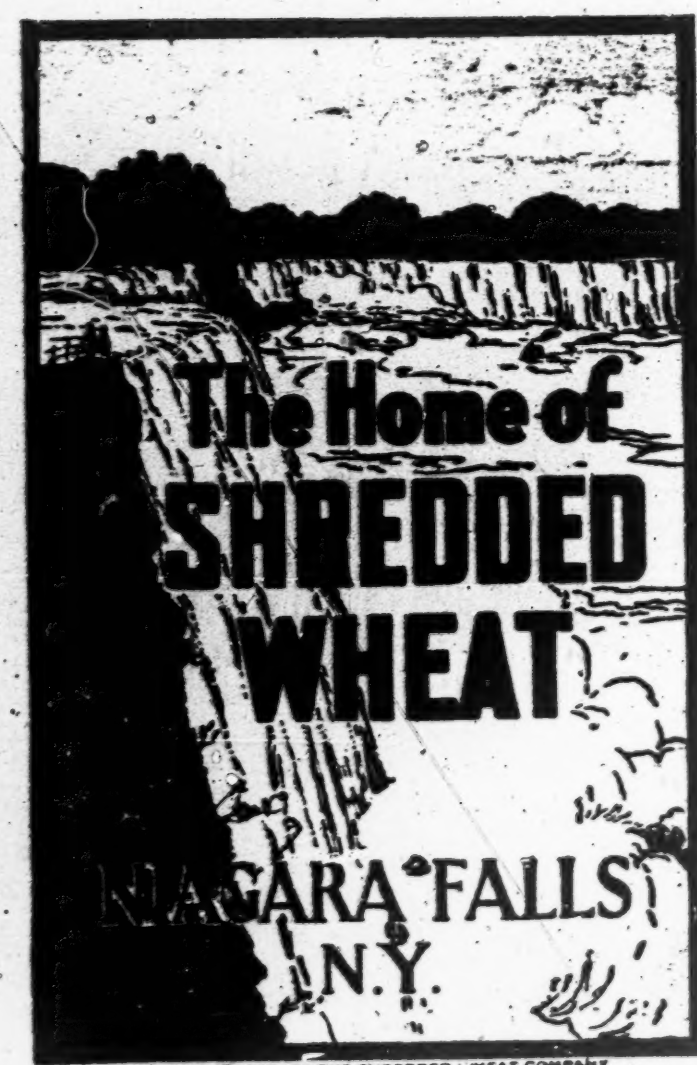
taken  
elements  
cooked,

# EAT

the Biscuits  
in pour hot  
the cream.

CRISPNESS

# 12 eat



COPYRIGHT 1926, BY THE SHREDDED WHEAT COMPANY

#10  
Feb 8 1933





## HOW YOU CAN OBTAIN THE KELLOGG STORY BOOKS OF GAMES

Send this package top together with 10¢ in coin to Kellogg Company, Battle Creek, Michigan, and we will mail you one of the new story books of games. The entire series of 4 Story Books of Games may be secured for 4 package tops and 30¢ in coin.

Write your name and address plainly on the opposite side of this carton top, and glue coin on this side.

This offer valid in the states of Wisconsin, Washington, Nevada, Kansas and in other states having laws prohibiting this form of merchandise.

7+8  
9+10

# Kellogg's WHOLE WHEAT BISCUIT



MADE OF DELICIOUSLY FLAVORED  
WHOLE-WHEAT SHREDS, DOUBLE TOASTED

## KELLOGG ES

coin to Kellogg  
mail you one of  
4 Story Books  
30¢ in coin.

opposite side of

prohibiting this form of merchandise.

## Certified FOR FOOD VALUE

Kellogg's WHOLE WHEAT Biscuit contains practically all the food value of entire wheat, including the natural bran. Two biscuits and a bowl of milk will supply about half the average person's daily requirements of both calcium and phosphorus and one-fourth the iron necessary, as well as many other minerals.

This certified analysis made by the Medical Arts Laboratory of Philadelphia, indicates the splendid food value of Kellogg's Shredded WHOLE WHEAT Biscuit.

Carbohydrates	77.31%	Minerals	3.10%
Protein	12.97%	Fiber	2.45%
Fat	1.98%	Moisture	3.12%

### MINERALS

Calcium	3.30%	Sodium	1.23%
Iron	.82%	Chloride	1.04%
Copper	trace	Phosphorus	48.17%
Magnesium	10.52%	Sulphur	1.54%
Potassium	33.16%	Silica	.36%

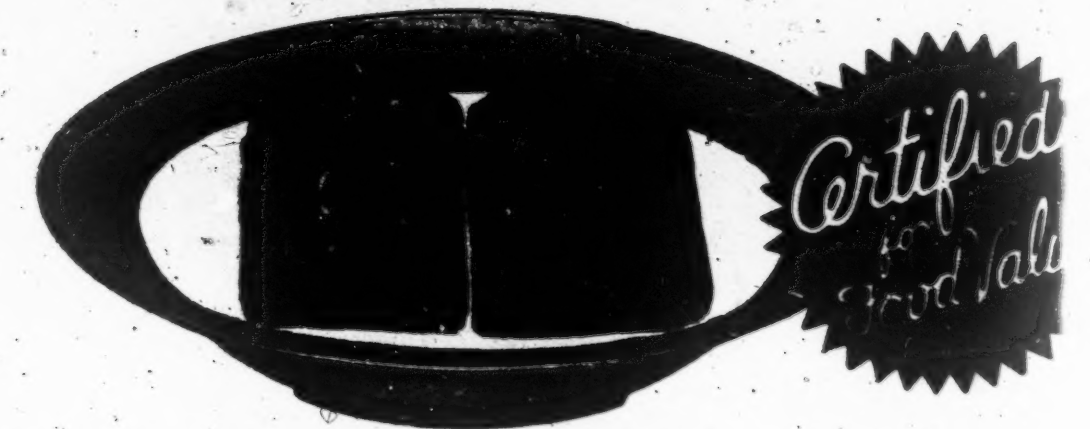
Kellogg's WHOLE WHEAT Biscuits are a good source of Vitamin G. When served with milk or cream, six vitamins are present:

Vitamin A	Vitamin B	Vitamin C
Vitamin D	Vitamin E	Vitamin G



MADE OF DELICIOUSLY FLAVORED  
WHOLE-WHEAT SHREDS, DOUBLE TOASTED

# Kellogg's WHOLE WHEAT BISCUIT



15 BISCUITS

12½ OUNCES

# Kellogg's WHOLE WHEAT BISCUIT

15  
BISCUITS



**Kellogg's**

## **WHOLE WHEAT BISCUIT**

Are made of delicately flavored whole-wheat shreds. These shredded biscuits are a new convenient size. Two just fit the cereal bowl.

Kellogg's Whole Wheat Biscuit are delicious served with hot or cold milk or cream; and a special treat with berries, peaches, prunes, bananas or other fresh or preserved fruits. Add sugar or salt to suit taste—or sweeten with honey.

These nourishing, easy-to-digest biscuits are excellent for lunch as well as breakfast. Ideal for children's suppers or for a late bed-time snack.

**KELLOGG COMPANY**

BATTLE CREEK, MICHIGAN

LONDON, ENGLAND      LONDON, CANADA  
SYDNEY, AUSTRALIA

(CASE NO. 324)

**EAT**



**UNCES**

**15  
BISCUITS**



**PLAINTIFF'S EXHIBIT NO. 83.**

**Summary of Advertising and Promotional Work Used  
During Period—1895 to July 31st, 1927.**

Magazine and Newspaper advertising started in the year of 1897 in a small way. However, each year the amount of Newspaper and Magazine advertising was gradually increased until as early as 1907 it was necessary to make separate appropriations for Magazines and Newspapers.

Using a 5 year period from 1922-1927 the number of Newspapers and Magazines used were as follows:—

1922	171 Regular Papers (No Magazines)	
1923	235 Regular Papers (No Magazines)	
1924	244 Regular Papers	
	40 Regular Papers (Rotogravure sections—	
		4 Magazines (National)
1925	291 Regular Papers	1 Magazine
1926	255 Regular Papers	
	381 Western Union List	4 Magazines
1927	325 Regular Papers	
	740 Western Union List	7 Magazines
TOTAL	2682 Newspapers.....	16 Magazines
	Special Newspaper Contests—1 National Recipe Contest	
	1 National Teacher's and Pupil's Essay Contest.	
	1 International Teacher's and Pupil's Essay Contest.	
Booklets		26,325,000
Hangers		1,978,245 (S. W.)
		120,000 (Triscuit)
Leaflets & Folders		88,043,500 (S. W.)
		11,400,000 (Triscuit)
Blotters		29,360,000 (S. W.)
		1,700,000 (Triscuit)
Car Cards		826,300
Menus		19,025,250



Cut-outs Window Trims, Panels & Transparencies	1,318,900
Signs, Banners, Posters & Stickers	15,000 (Triscuit)
	164,500 (S. W.)
Visitors Post Cards (given free to Visitors to "Home of S. W.")	2,050,000

#### Miscellaneous Promotional Work

Advertising in College, Medical and Hotel Publications  
 Hotel and Restaurant Work.  
 Church Suppers.  
 Illustrated Lectures.  
 3 different Industrial Motion Pictures.  
 50,000 Triscuit Racks  
 23,000 School Charts  
 375,000 Magazine imprints  
 350,000 Circulars and invitations to the Public con-  
 cerning exhibits of our Process.

#### Poster Advertising

Subway, elevateds in New York City for 3 months  
 during 1922

Subway and elevateds in New York City for entire  
 year of 1923

Subway, elevateds and Suburbs in New York City,  
 Brooklyn, Chicago, Philadelphia and Boston for entire  
 year of 1924.

1895

No magazine or newspaper advertising.

General advertising consisting of street car  
 cards, recipe booklets and pamphlets, school  
 charts, posters etc. Booklet used "The  
 Vital Question"—4 editions of 100,000 each. \$13,473.47



1896

No magazine or newspaper advertising.  
 General advertising consisting of the same  
 mediums as used in 1895, but amounting to 48,518.60  
 Booklet used "The Vital Question"

1897

Newspaper and magazine advertis-  
 ing amounting to \$3,328.54  
 General advertising consisting of  
 street car cards, recipe booklets  
 and pamphlets, school charts, etc. 25,618.29  
 Booklet used "The Vital Ques-  
 tion"—(Small size) 11 editions  
 of 100,000 each. 28,946.83

1898

Newspaper and magazine advertis-  
 ing amounting to \$11,667.95  
 General advertising consisting of  
 recipe booklets, hangers in colors  
 (14 to set) and posters. 33,927.65  
 Colored Store Hangers, "More  
 Light" (picturing various ways  
 of serving Shredded Wheat) 45,595.60

1899

Newspaper and magazine advertis-  
 ing amounting to \$ 3,295.11  
 General advertising consisting of  
 two editions of car cards (both  
 showing ways of serving S. W.)  
 and posters. 62,277.10  
 Booklet used "The Vital Ques-  
 tion" cook book. 65,572.21



## 1900

No magazine or newspaper advertising.

General advertising consisting of booklets, pamphlets, and posters.

Booklets used—

"More Light" Booklet in English

"More Light" Booklet in French

90,727.24

## 1901

No advertising records available

## 1902

Newspaper and magazine advertising

\$82,298.89

General advertising consisting of booklets, pamphlets, hangers and street car cards, etc. ....

44,709.51

Booklets used—

250,000 "Vita's Question" cook book

100,000 Leaflets "S. W. as a Food for Children"

150,000 4-page folder "S. W. Biscuit"

3,000,000 Recipe leaflets in color —4 to set.

800,000 Color menu inserts

50,000 Color shelf hangers

500,000 Cook Girl Banner Hangers (In colors)

25,000 Window Transparencies

2,300 Street car cards

2,000 Chefs' Menus

\$127,008.40



1903

Magazine and newspaper advertising .....	\$185,785.59
General advertising consisting of magazine inserts and one color leaflets .....	42,229.72
250,000 magazine inserts (S. W. Dishes in colors)	
125,000 magazine inserts of Triscuit	
5,000 each of one color leaflets	
—Doctor	
Dentist	
Lawyer	
Minister	
Nurse	
Words of commendation about S. W. and Triscuit	228,015.31

1904

Magazine advertising	\$51,408.45
General advertising consisting of booklets, cut-outs, menus, car cards etc.	59,614.38
Booklet "A Family Affair"	100 M.
4-page colored Leaflet—	
S. W. Biscuit	1¼ million
Street car cards	50,000
Small colored Triscuit	
Hanger	50,000
Water proof S. W. Sign	
—2 colors	10,000
Peach Folder in colors	1¼ million
Meat Strike Leaflets	100,000
Special Menu Cover	5,000
Leaflet	10,000



S. W. Triscuit Booklet	500,000
Re-edition booklet	-
"More Light"	100 M
18th edition cook book	-
"The Vital Question"	250 M
Cook Girl Cut-outs	15 M
Colored Menus	50 M
Cook Girl—Transparencies	12 M
Church Suppers	1965

4,290.00

115,302.5

Newspaper and magazine advertising

\$100,907.79

General advertising amounting to and consisting of:

19,015.42

Colored recipe Leaflets

1,100,000

Booklet "Of Vital Interest to Mothers"

25,000

Car Cards (S. W. & Triscuit)

65,000

4-page Folder—S. W. Folder (colored)

1,500,000

Colored Blotters (Ways of serving S. W.)

100,000

Booklet "Shreds of Life"

750,000

Menu cards

35,000

Triscuit Easel Cards

No amount given

Blotters

10,000

4-page colored Folder "A Perfect Food"

1 1/4 million

1 sheet S. W. Poster

1,500

4-page colored "Health & Strength Leaflet"

1,230,000

114,822.9



1906

Magazine advertising	\$33,977.98
General advertising amounting to	80,709.74
and consisting of:	
150,000 Colored S. W. Blotters	
30,000 Cereal Special Slips	
25 Soda Fountain Hanger	
5,000 Waterpage of S. W. Signs	
2,500 Menu Covers	
1,000 Restaurant Placards	
70,000 Car Cards	
30,000 Biscuit Girl Hanger	
5,000 Window Trims	
100,000 Colored Blotters	
150,000 4-page folders (colors)	
150,000 4-page folders (colors)	
150,000 2 color C. W. Blotter	
500,000 4-page Folders ("For Old and Young")	
200,000 Leaflets	\$174,687.72

1907

Newspaper Advertising	\$ 27,818.02
Magazine Advertising	105,870.70
General Advertising amounting to	82,969.59
and consisting of	
200,000 Colored Kitchen Hangers	
100,000 Colored Menus	
500,000 Colored Recipe Slips (or leaflets)	
30,000 Car cards	
5,000 Cloth Awning Strips	
1,000,000 Colored 4-page S. W. Folders	
100,000 2-color circulars—"Come and See" Us Make S. W.	
1,000,000 Colored S. W. Booklets	



250,000 Vital Question Cook  
Books (In colors)

600,000 4-page S. W. Folders "A  
Way to Save"

500,000 C. W. S. W. Blotters (2  
colors)

No quantity given—Triangle win-  
dow Trim (Girl De-  
sign)

216,658.31

1908

Newspaper Advertising 59,888.79

Magazine Advertising 70,635.69

General Advertising amounting to 61,716.18  
and consisting of:

2,000,000 Colored 4-page S. W.  
Folders

250,000 4-page S. W. Folders

2,000,000 Return Post cards (for  
use with Vital Ques-  
tion Cook Book)

40,000 Car Cards

150,000 Strawberry Post cards

525,000 Strawberry Blotters

1,000,000 Colored 16-page S. W.  
Booklet — "More  
Life"

15,000 Strawberry Hanger

7,500 Instruction Sheets for S.  
W. Window Trim

7,500 Window Trims

200,000 Mechanical Exhibit  
Dodgers "A 20th Cen-  
tury Marvel"

90,000 S. W. Blotters

100,000 Booklets—"Views in and  
about the 'Home of  
Shredded Wheat' "



37,000 Folders—"Making Both Ends Meet"		
1,000,000 C. W. S. W. colored blot- ters		
200,000 S. W. sampling blotters (colored)		192,240.66
	1909	
Newspaper Advertising	\$ 62,877.08	
Magazine Advertising	70,399.90	
College and Hotel Paper Adver- tising	2,287.38	
General Advertising amounting to and consisting of:	42,368.56	
20,000 S. W. Blotters		
4,500 Colored S. W. Straw- berry Leaflets		
100,000 S. W. Cook Girl Stickers		
85,000 Restaurant Blotters		
300,000 Strawberry Blotters		
125,000 Strawberry Post Cards		
125,000 S. W. Calendar Hangers (colored)		
4,000,000 S. W. Folders		
2,000,000 Request Card for "Vital Question Cook Book"		
60,000 Car Cards		
165,000 Menu Cards		
250,000 "Vital Question Cook Book"		
50,000 Lecture Folders		
2,500 Lecture Hangers		
150,000 Doctor Folders—"An Easy Road to Health"		
15,000 Strawberry Leaflets		
24,000 Colored Menu Sheets		
25,000 One color Menu Sheets		



7,500 Window Trims	
50,000 Colored double Menu Cards	
1,000,000 S. W. C. W. Blotters 1910	\$177,932.92
Newspaper Advertising	\$ 65,502.34
Magazine Advertising	70,750.18
College and Hotel paper Advertising	2,234.76
General Advertising amounting to and consisting of:	40,802.05
129,000 Car Cards	
390,000 Colored Calendar Hang- ers	
3,800,000 Colored S. W. Folders, "This Is the Way I Spell Breakfast"	
200,000 Strawberry S. W. Blot- ters	
175,000 Strawberry S. W. Post Cards	
2,000 Metal Restaurant Signs	
150,000 Colored S. W. Farmers' Folders, "The Man Behind the Plow"	
300,000 S. W. Colored Blotters	
400,000 S. W. Folders—"Making Both Ends Meet"	
500,000 Triscuit Blotters	
300,000 C. W. S. W. Blotters	
250,000 Cook Books—"S. W. Dishes"	
1,800,000 Return Post Cards used with recipe book—"S. W. Dishes"	
150,000 Colored S. W. Leaflets	



1,100,000 C. W. S. W. Blotters  
 25,000 Window Strips for Display  
 4,800 Colored S. W. Folders—  
 "On Guard"  
 285,000 Menu Cards  
 341,750 Menus  
 500,000 S. W. Booklets — "Life  
 and Health"

179,289.33

1911

Newspaper Advertising	\$ 69,341.92
Magazine Advertising	72,639.49
College and Hotel Papers	2,365.72
General Advertising amounting to and consisting of:—	46,918.26
60,000 Car Cards	
125,000 Strawberry paper hang- ers	
150,000 Restaurant paper hang- ers	
50,000 S. W. Folders — "The Bread of Health"	
15,000 S. W. Window Trims	
150,000 Menus	
6,000 Sampling Folders	
150,000 Colored S. W. Folders "On Guard"	
760,000 S. W. Hot Milk Blotters (Home)	
240,000 S. W. Hot Milk Blotters (Office)	
25,000 S. W. Telephone Boy Hangers	
75,000 Hot Milk Leaflets	
100,000 S. W. Leaflets for the Grocer	

\$191,265.39



1912

Newspaper Advertising	81,412.63
Magazine Advertising	79,392.47
College and Hotel Papers	2,543.63
General Advertising amounting to	41,082.26
and consisting of:—	
100,000 Post Cards (Visitors)	
75,000 Car Cards	
750,000 Return Post Cards used with "S. W. Dishes"	
2,500 Lecture Hangers	
100,000 Lecture Folders	
70,000 Colored S. W. Leaflets	
430,000 Colored S. W. "Special To-day" Leaflets	
200,000 Strawberry S. W. Blot- ters	
855,000 Menus	
6,500,000 S. W. Sampling Folders	
500,000 Menus	
1,200,000 Triscuit Blotters	
800,000 S. W. C. W. Blotters	204,430.90

1913

Newspaper Advertising	71,056.52
Magazine Advertising	87,171.28
College and Hotel Papers	2,434.02
Church Suppers	1,354.20
General Advertising amounting to	54,521.25
and consisting of:—	
1,000,000 Sampling Folders—"The Call of the Bell"	
700,000 Menus	
80,000 Car Cards	
500,000 Visitors' Post Cards	
25,000 Factory Window Display	
20,000 Window Transparencies	



250,000 S. W. C. W. Blotters  
(Small)

175,000 S. W. C. W. Blotters  
(Large)

216,537.27

1914

Newspaper Advertising \$105,367.14  
Magazine Advertising 83,770.10  
College and Hotel Papers 2,587.54  
Hotel and Restaurant Work 7,490.76  
General Advertising amounting to 47,766.89

and consisting of:—

1,000,000 Sampling Folders—  
From "Son Rise" to  
"Son Set"

500,000 Booklets—"Wonders of  
Niagara"

972,000 Menus

20,000 Car Cards

\$246,982.43

1915

Newspaper Advertising \$109,909.84  
Magazine Advertising 85,389.05  
College and Hotel Papers 2,045.78  
Hotel and Restaurant Work 4,472.81  
General Advertising amounting to 42,344.61  
and consisting of:—

1,000,000 Menus

200,000 Booklets—"Building  
Better Babies"

150,000 Visitors Post Cards

1,600,000 S. W. C. W. Blotters

10,000 Car Cards

15,000 Display Cards

244,162.09

1916

Newspaper Advertising 112,044.01  
Magazine Advertising 61,776.12  
College and Hotel Papers 2,377.85  
Hotel and Restaurant Work 3,720.72



General Advertising amounting to 42,570.92  
and consisting of:—

2,850,000 Menus

7,000,000 S. W. Sampling Folders  
—“Getting a Good  
Start”

60,000 Car Cards

222,489.62

1917

Newspaper Advertising 88,954.03  
Magazine Advertising 57,885.29  
College and Hotel Papers 2,139.86  
Hotel and Restaurant Work 4,486.81  
General Advertising amounting to 37,835.11  
and consisting of:—

3,850,000 Menus

6,000,000 S. W. Sampling Folders  
“D a d d y, Mother,  
Brother & Me.”

500,000 Booklets “Happy Way  
to Health”

25,000 Car Cards

2,050,000 Leaflets “Make It Your  
‘War Bread’ ”

2,000,000 S. W. C. W. Blotters

191,601.10

1918

Newspaper Advertising 66,509.27  
No Magazine Advertising  
Hotel and Restaurant Work 379.41  
General Advertising amounting to 27,535.48  
and consisting of:—

2,000,000 S. W. Blotters—“Lib-  
erty Loaf”

250,000,000 Menu Booklet—  
“Meatless Menus”

50,000 Special Hanger



300,000 Booklets "What the  
War has Taught Us"

200,000 S. W. Blotters—  
"Stand Behind the  
Flag"

94,424.16

1919

Newspaper Advertising \$164,508.10

Hotel and Restaurant Work 1,594.45

General Advertising amounting to 32,921.27

and consisting of:—

300,000 Booklets—"Victory"

200,000 S. W. Blotters—"For  
the Summer Days"

500,000 S. W. Booklet—"The  
Happy Way"

150,000 Visitors' Post Cards

205,000 S. W. Blotters—"The  
Food that Satisfies"

40,000 S. W. Hangers

Motion Picture film of  
Production of S. W.

\$199,023.82

1920

Newspaper Advertising 175,678.98

Hotel and Restaurant Work 1,908.56

General Advertising amounting to 38,479.10

and consisting of:—

250,000 Booklets—"Building  
Better Babies"

2,000 School Charts

200,000 Visitors' Post Cards

735,000 Menus

216,066.64

1921

Newspaper Advertising 269,016.89

Hotel and Restaurant Work 8,987.63

General Advertising amounting to 47,830.99

and consisting of:—



50,000 Street Car Cards  
 21,000 School Charts  
 Motion Picture Film—  
 "It's All In The  
 Shreds"

335,835.50

1922

Newspaper Advertising 340,348.69  
 General Advertising amounting to 105,353.17  
 and consisting of Poster Adver-  
 tising in Subways and elevateds  
 in New York City for 3 month  
 period.

200,000 Visitors Post Cards  
 10,000,000 Sampling Folders—  
 "Bring me Two if  
 it's S. W."

2,500,000 Menus  
 150,000 Window Posters  
 500,000 Baby Booklets  
 5,000,000 C. W. Blotters—"A Hot  
 Dish for the Cold  
 Days"

445,701.80

1923

Newspaper Advertising \$350,280.96  
 General Advertising amounting to 51,412.28  
 and consisting of:—

10,000,000 Sampling Folders  
 "Safe at the 'Home  
 Plate'"

5,000,000 C. W. Blotters—  
 "Warmth and  
 Strength for the  
 Day"

10,000 Window Posters  
 50,000 Display Cards  
 100,000 Visitors Post Cards



1,000,000 Menus •  
 17,000 Window Display Panels  
 10,000,000 Sampling Letters  
 250,000 Booklets—"Health  
 from the Whole  
 Wheat"  
 Poster Advertising in  
 New York City for 1  
 Year

401,693.24

1924

Newspaper Advertising	222,912.21
Magazine Advertising	42,130.65
Illustrated Lectures	1,283.30
Hotel and Restaurant Work	1,091.24
General Advertising amounting to	61,942.64

and consisting of:—

150,000 Window Display Cut-outs  
 50,000 Booklet "Ask the Doc-  
 tor"

464,900 Cut-outs  
 2,000,000 Menus  
 50,000 Triscuit Backs  
 20,000 Hangers (Triscuit)  
 1,000,000 Leaflet (Triscuit)  
 100,000 Window Display Sign  
 200,000 Visitors Post Cards  
 2,000,000 Leaflet (Triscuit) (for  
 England)

Industrial Film—  
 "Shreds"

Poster Advertising in Subway—  
 elevateds and suburbs of New  
 York City, Brooklyn, N. Y., Chi-  
 cago, Philadelphia and Boston  
 for entire year of 1924 at a total  
 cost of

64,630.62

National Recipe Contest

393,990.66



## 1925

Newspaper Advertising	415,645.45
Magazine Advertising	62,775.75
Newspaper Advertising (Triscuit)	23,282.91
General Advertising amounting to	25,171.43
and consisting of:—	
1,400,000 Folders (Triscuit)	
3,000,000 Booklet—"50 Ways of Serving Shredded Wheat"	
1,500,000 C. W. Blotters—"A Warm, Nourishing Meal"	
40,000 Large Cut-outs	
100,000 Visitors Post Cards	
2,000,000 Summer Fruit Blotters	
15,000 Banners (Triscuit)	
25,000 S. W. Hangers	
20,000 S. W. Banners (Special Sales Week)	
50,000 Triscuit Hangers	
500,000 Baby Booklets	
90,000 S. W. Hangers	

526,875.54

## 1926

Newspaper Advertising	\$343,664.42
College Publications	15,364.19
Medical Publications	11,164.94
Magazine Advertising	155,533.52
Special Newspaper Advertising	53,241.90
General Advertising amounting to	44,135.57
and consisting of:—	
500,000 Booklets—"50 Ways of Serving S. W."	
1,000,000 C. W. Blotters "For Warmth and Strength Eat S. W."	



10,000,000 Sampling Folders—  
 "What Do You Eat?"  
 4,000,000 Triscuit Leaflets  
 50,000 Window Display "What  
 Do You Eat?"  
 25,000 S. W. Week Banners  
 15,000 S. W. Week Hangers  
 20,000 S. W. Side Panels  
 1st. Essay Contest (Na-  
 tional)

623,104.54

1927 (To July 31st)

Newspaper Advertising	\$269,702.19
College Publications	13,223.53
Medical Publications	6,954.20
Magazine Advertising	182,042.03
General Advertising amounting to	38,000.00

and consisting of:—

2,000,000 C. W. Blotters—"For  
 the Cold Days"  
 50,000 Large Displays  
 4,000,000 Triscuit Leaflet  
 2,000,000 Booklets—"Health in  
 Every Shred"  
 95,000 S. W. Hangers  
 25,000 Side Window Panels  
 10,000 S. W. Store Sales Hang-  
 ers  
 20,000 Shopping Bag Hangers  
 25,000 Restaurant Signs, or  
 Hangers  
 5,000,000 Sampling Folders  
 ("What Do You  
 Eat?") Revised  
 1,000,000 Menus  
 2nd Essay Contest (In-  
 ternational)



**The Following Schedule, With Occasional Variations,  
Includes the Newspapers in Which We Have  
Advertised From Year to Year  
Since 1897.**

**CONNECTICUT**

Bridgeport Post Telegram,  
Hartford Times,  
" Courant,  
Meriden Record,  
New Haven Journal Courier,  
" Register,  
New London Day  
Waterbury Republican American

**MASSACHUSETTS**

Fitchburg Sentinel  
Lawrence Tribune Eagle  
Lowell Courier Citizen  
" Sun  
Lynn Item  
Springfield Republican News & Union

**RHODE ISLAND**

Worcester Post,  
" Telegram Gazette  
Providence News  
" Bulletin  
Woonsocket Call

**MASSACHUSETTS**

Boston Herald Traveler  
" American

**ILLINOIS**

Bloomington Pantagraph  
Danville Commercial News  
Decatur Review  
" Herald



ILLINOIS

Galesburg Register Mail  
Peoria Star  
" Journal Transcript  
Quincy Herald and Whig  
Rockford Star  
" Register Gazette  
Springfield State Journal  
" State Register  
Chicago Tribune  
" Herald Examiner

WISCONSIN

Madison Capital Times  
" Wisconsin News  
" Journal

MICHIGAN

Battle Creek Moon Journal  
" Enquirer News  
Bay City Times Tribune  
Flint Journal  
Grand Rapids Herald  
" Press  
Jackson Citizen Patriot  
Kalamazoo Gazette  
Lansing Capital News  
" State Journal  
Saginaw News Courier

OHIO

Akron Times Press  
" Beacon Journal  
Canton News  
" Repository  
Cincinnati Post  
" Times Star  
Columbus Dispatch  
" State Journal



## OHIO

Dayton News  
" Herald-Journal  
Lima Star  
" News  
Mansfield News  
" Journal  
Marion Star  
Springfield Sun  
" News  
Toledo News Bee  
" Blade  
Youngstown Telegram  
" Vindicator  
Zanesville Times Recorder

## MICHIGAN

Detroit Free Press  
" News

## OHIO

Cleveland Press & News  
" Plain Dealer

## INDIANA

Evansville Press  
" Courier Journal  
Ft. Wayne News Sentinel  
" Journal Gazette  
Indianapolis Star  
" News  
Huntington Herald  
Marion Chronicle  
Muncie Press  
Portland Republican Sun  
South Bend News Times  
" Tribune  
Terre Haute Star  
" Tribune



FLORIDA

Jacksonville Journal  
" Times Union  
Miami News  
" Herald  
Tampa Times  
" Tribune

GEORGIA

Atlanta Constitution  
" Journal  
Macon News  
" Telegraph  
Savannah Press  
" News

NORTH CAROLINA

Charlotte Observer  
" News

SOUTH CAROLINA

Charleston News Courier  
Columbia Record  
" Star  
Spartansburg Herald & Journal

KANSAS

Arkansas City Traveler  
Emporia Gazette  
Hutchinson Herald News  
Salina Journal  
Topeka State Journal  
" Capital  
Wichita Eagle  
" Beacon

MISSOURI

St. Joseph Gazette  
" News Press



## MISSOURI

Kansas City Journal Post  
" Star  
Independence Free Press  
Ft. Scott Tribune Monitor

## ALABAMA

Anniston Star  
Mobile News Item  
" Register  
Montgomery Advertiser  
" Journal  
Tuscaloosa News

## KENTUCKY

Bowling Green Park City News  
Lexington Leader-Herald  
Paducah Sun & Democrat

## MISSISSIPPI

Biloxi Gulfport Herald  
Jackson Clarion Ledger  
" News  
Meridian Star  
Vicksburg Port

## TENNESSEE

Memphis Press Scimitar  
" Commercial Appeal  
Nashville Tennessean  
" Banner  
Chattanooga Times  
Knoxville Journal  
Memphis Commercial Appeal

## SOUTH DAKOTA

Huron Huronite

## MICHIGAN

Escanaba Press  
Houghton Mining Journal



MINNESOTA

Crookston Times  
Detroit Record  
Mankato Free Press  
Minneapolis Tribune  
Rochester Post Bulletin  
St. Paul News  
" Dispatch & Pioneer Press

NORTH DAKOTA

Bismarck Tribune  
Fargo Forum  
Grand Forks Herald

SOUTH DAKOTA

Aberdeen American News  
Deadwood Pioneer Times  
Sioux Falls Argus Leader  
Rapid City Journal

WISCONSIN

Green Bay Press Gazette  
La Crosse Tribune & Leader  
Oshkosh Northwestern  
Sheboygan Press  
Superior Telegram  
Wausau Record Herald

MINNESOTA

Duluth Herald

NEW YORK

Brooklyn Eagle  
" Standard Union  
" Times  
New York Herald Tribune  
" Post  
" World  
" Sun



## NEW YORK

New York Journal  
" The Day  
" Jewish Journal  
Yonkers Herald

## NEW JERSEY

Jersey City Journal  
Newark Star Eagle  
" News  
New Jersey Home News  
New Brunswick Home News  
Paterson Call  
" Press Guardian  
Elizabeth Journal  
Asbury Park Press

## IOWA

Des Moines Register Tribune  
Sioux City Tribune

## NEBRASKA

Hastings Tribune  
Omaha World Herald  
McCook Gazette

## MARYLAND

Baltimore Post

## PENNSYLVANIA

West Chester Local News

## DELAWARE

Wilmington Journal News

## DISTRICT OF COLUMBIA

Washington Star

## NEW JERSEY

Camden Courier



PENNSYLVANIA

Easton Express  
Hanover Sun  
Harrisburg Telegraph  
Lancaster Intelligencer & News Journal  
Reading Times  
Scranton Republican  
Wilkes-Barre Record  
Williamsport Sun, Gazette & Bulletin  
Philadelphia Bulletin  
" Record  
Altoona Tribune  
Erie Times  
Johnstown Democrat  
Pittsburg Gazette Times

WEST VIRGINIA

Charleston Mail  
Clarksburg Telegram  
Huntington Herald Dispatch  
Wheeling Register

MAINE

Fort Fairfield Review  
Augusta Kennebec Journal  
Lewiston Sun Journal  
Portland Express & Press Herald  
Presque Isle Star Herald  
Bumford Falls Times

NEW HAMPSHIRE

Concord Monitor & Patriot  
Manchester Union Leader  
Keene Sentinel  
Nashua Telegraph

MONT

Burlington News  
Rutland Herald  
St. Johnsbury Caledonian Record



**ARKANSAS**

Ft. Smith Times Recorder  
Hot Springs Sentinel Record

**MISSOURI**

Columbia Tribune  
Jefferson City Tribune-Post  
Joplin Globe & News  
Springfield News

**OKLAHOMA**

Bartlesville Enterprise  
Muskogee Phoenix & Times Democrat  
Oklahoma City News  
Tulsa News

**MISSOURI**

St. Louis Post Dispatch

**TEXAS**

Abilene Reporter News  
Amarillo Globe & News  
El Paso Herald & Times  
Ft. Worth Star Telegram  
Houston Chronicle  
" Post Dispatch  
San Antonio Light  
" Express & News  
Waco News-Tribune  
" Times-Herald  
Wichita Falls Record News  
" Times  
Dallas Times-Herald

**LOUISIANA**

New Orleans Item

**NEW YORK**

Albany Times Union  
" Knickerbocker Press



Binghamton Sun Press & Leader  
Auburn Advertiser Journal & Citizen  
Buffalo News  
    " Courier & Express  
    " Everybody's Daily  
Elmira Star Gazette & Advertiser  
Gloversville Herald  
    " Leader Republican  
Jamestown Journal  
    " Post  
Middletown Herald & Times Press  
Niagara Falls Gazette  
Olean Herald  
    " Times  
Rochester Times Union  
    " Democrat & Chronicle  
Rome Sentinel  
Schenectady Union Star  
    " Gazette  
Syracuse Journal  
    " Post Standard  
Troy Times  
    " Record  
Utica Press  
    " Observer Dispatch  
Watertown Times  
    " Standard  
Corning Leader  
Batavia News







# ADVERTISING AND PROMOTIONAL

1895

1896

## Advertising Expense:

1. Advertising Supplies. (Home Office)	.....	.....
2. Advertising Supplies and cost of distribution through company's division offices	.....	.....
3. Magazines and Newspapers	.....	.....
4. General Advertising, consisting of street car cards, booklets, pamphlets, postage, school charts, billboards, etc.	\$13,473.47	\$ 48,518.60
5. Demonstration (by Home Office)	.....	.....
6. Demonstration (through Co's. div. offices)	.....	.....
7. Sampling and Cost of Distribution.	.....	.....
8. Church Suppers	.....	\$ 31,891.41
9. Mechanical Exhibits	.....	.....
10. Hotel & Restaurant work—displays	.....	.....
11. Entertainments and Conventions	\$13,473.47	\$ 80,410.01

## Mixed Advertising—Promotional (Field) Expense:

12. Division Office—Managers' Compensation & General Divisional Expenses.	.....	.....
13. Division Office Expense.	.....	.....
14. Division Office—Misl. Expense	.....	.....
15. Fieldmen's Conference (Div. Managers & Crew Managers)	.....	.....
16. Field Activity Surveys	.....	.....
17. Field Travel Expense (Home Office)	.....	.....
17A. Advertising & Promotional Expense—Eng. Acct.	.....	.....

## Promotional (Field) Expense:

18. Crew Managers' Compensation & Expenses	\$ 3,989.45	\$ 35,021.37
19. Miscellaneous Promotional Expense (Unclass.)	\$ 3,989.45	\$ 35,021.37

TOTAL

\$17,462.92 \$115,431.38



# ADVERTISING AND PROMOTIONAL EXPENSE IN UNITED STATES, CANADA AND ENGLAND

	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906
ugh								\$ 7,321.68	\$ 15,339.37	\$ 13,974.66	\$ 7,082.34	
								39,638.38	70,580.09	65,661.72	68,464.41	\$ 35,808.84
ards,			\$ 3,328.54	\$ 11,667.95	\$ 3,295.11			82,298.89	185,785.59	51,408.45	100,907.78	113,936.04
bill-	\$13,473.47	\$ 48,518.60	\$25,618.29	\$ 33,927.65	\$ 62,277.10	\$ 90,727.24	\$	44,709.51	42,229.72	59,614.38	19,015.42	80,733.94
			\$40,489.16	\$ 54,462.58	\$ 54,939.37	\$ 22,480.03		9,575.46	10,638.77	17,706.69	40,676.23	
								17,834.17	40,107.11	29,959.09	28,882.34	22,287.14
								29,521.68	70,400.18	67,112.04	70,738.49	122,634.78
		\$ 31,891.41								\$ 4,290.00		
												\$ 1,568.16
	\$13,473.47	\$ 80,410.01	\$69,435.99	\$100,058.18	\$120,511.58	\$113,207.27		\$230,899.77	\$435,080.83	\$309,727.03	\$335,767.01	\$376,968.90
ral								125,165.20	46,215.68	41,897.83	37,054.76	49,859.36
								7,376.44	23,522.02	21,542.08	20,277.73	22,465.24
an-									10,027.83	8,584.50	6,332.70	10,384.29
										59,592.73	45,532.62	45,882.81
								\$132,541.64	\$ 79,765.53	\$131,617.14	\$109,197.81	\$128,591.70
	\$ 3,989.45	\$ 35,021.37	\$21,385.60	\$ 28,095.99	\$ 91,214.14	\$192,729.01		19,810.41	54,207.67	41,905.29	40,682.68	41,543.30
								\$ 5,516.66	\$ 11,813.20	12,584.71	13,941.10	12,082.35
	\$ 3,989.45	\$ 35,021.37	\$21,385.60	\$ 28,095.99	\$ 91,214.14	\$192,729.01		\$157,868.71	\$145,786.40	\$186,107.14	\$163,821.59	\$182,217.35
	\$17,462.92	\$115,431.38	\$90,821.59	\$128,154.17	\$211,725.72	\$305,936.28		\$388,768.48	\$580,867.23	\$495,834.17	\$499,588.60	\$559,186.25



04	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917
74.66	\$ 7,082.34									\$ 22,887.04	\$ 24,819.92	\$ 23,340.54	\$ 19,028.99
61.72	68,464.41	\$ 35,808.84	\$ 50,485.04	\$ 54,176.89								6,444.42	3,612.85
08.45	100,907.78	113,936.04	156,424.76	150,506.35	\$155,503.91	\$166,744.67	\$179,039.28	\$196,741.75	198,335.42	230,001.23	236,337.92	251,608.86	244,148.58
514.38	19,015.42	80,733.94	84,646.85	63,641.37	44,047.12	40,902.64	49,246.65	43,598.60	56,771.32	54,272.47	48,834.61	49,759.31	48,108.98
06.69	40,676.23				7,682.00	7,276.47	10,151.01	10,326.87	11,188.82	11,836.95	11,731.58	12,535.46	13,826.04
59.09	28,882.34	22,287.14	20,542.01	15,231.24	15,480.80	12,557.88	10,490.99	9,609.96	6,770.87	3,421.63	128.08	50.92	
12.04	70,738.49	122,634.78	145,303.17	125,830.78	157,914.12	209,148.58	248,422.35	260,310.54	283,105.75	332,952.66	360,438.39	390,472.10	459,074.95
90.00						7,054.18	3,655.15	4,846.40	8,253.70	8,286.74	1,324.02	519.09	
		\$ 1,568.16	\$ 864.63	\$ 30,009.66	\$ 21,992.83	20,968.91	12,156.59	7,998.90	8,637.94	5,427.89	4,733.50	1,714.38	130.00
										7,490.76	4,472.81	3,720.72	4,486.81
													952.19
27.03	\$335,767.01	\$376,968.90	\$458,266.46	\$439,396.29	\$402,620.78	\$464,653.33	\$513,162.92	\$533,433.02	\$573,063.82	\$676,577.37	\$692,820.83	\$ 740,165.80	\$ 793,369.39
97.83	37,054.76	49,859.36	51,769.71	51,268.86	63,523.50	70,071.60	67,355.16	66,680.34	73,209.65	76,478.88	74,335.58	104,457.67	97,706.65
42.08	20,277.73	22,465.24	23,389.02	24,215.39	24,858.63	25,719.14	28,722.80	30,353.62	33,844.06	36,703.15	36,180.84	38,647.07	41,610.99
84.50	6,332.70	10,384.29	15,220.05	17,979.23	59,473.85	64,172.86	49,788.09	54,591.05	52,960.75	40,618.74	39,755.36	25,616.74	20,925.89
									191.15		2,346.25	2,212.54	2,699.31
92.73	45,532.62	45,882.81	40,292.52	41,781.95	41,083.21	42,912.03	45,528.35	24,304.78	58,470.52	68,416.42	73,421.88	79,744.74	120,252.25
17.14	\$109,197.81	\$128,591.70	\$130,671.30	\$135,245.43	\$188,939.19	\$202,875.63	\$191,394.40	\$175,929.79	\$218,616.13	\$222,217.19	\$226,039.91	\$ 250,678.76	\$ 283,195.00
05.29	40,682.68	41,543.30	34,015.40	23,421.56	20,172.02	14,224.88	17,003.55	25,282.52	24,871.35	22,657.96	24,769.87	12,984.51	11,506.30
84.71	13,941.10	12,082.35	13,768.09	13,710.30	15,621.03	7,562.27	6,349.18	6,368.60	6,086.10	5,809.66	6,238.66	6,009.69	6,156.60
07.14	\$163,821.59	\$182,217.35	\$178,454.79	\$172,477.29	\$224,732.24	\$224,662.78	\$214,747.13	\$207,580.91	\$249,573.58	\$250,684.81	\$257,048.44	\$ 269,672.96	\$ 300,858.00
34.17	\$499,588.60	\$559,186.25	\$636,721.25	\$611,873.58	\$627,353.02	\$689,316.11	\$727,909.15	\$741,013.93	\$822,637.40	\$927,262.18	\$949,869.27	\$1,009,838.76	\$1,094,227.40



THE SHREDDED WHEAT COMPANY AND SUBSIDIARY COMPANIES

	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	Total
	\$ 19,028.99	\$ 21,959.30	\$ 27,362.17	\$ 27,616.25	\$ 25,943.35	\$ 45,304.72	\$ 60,236.66	\$ 125,347.99	\$ 68,316.74	\$ 71,252.06	\$ 607,133.78
	3,612.85	2,151.68	7,491.20	5,624.75	2,392.13	11,871.86	8,033.20	14,983.77	35,191.39	20,904.81	503,517.43
	244,148.58	91,497.97	214,359.67	248,986.82	420,985.96	484,982.57	583,262.31	481,701.07	778,455.00	873,001.28	6,895,253.73
	48,108.98	42,076.30	39,189.84	46,181.47	56,696.50	115,799.40	76,600.46	98,865.48	85,305.90	111,229.11	1,775,619.70
	13,826.04	11,504.35	13,426.14	17,565.42	19,896.82	11,962.54	14,228.35	19,181.37	21,667.14	20,184.04	497,139.66
	459,074.95	73,817.70	293,115.30	132,342.78	342,931.09	486,454.02	526,453.40	552,267.39	476,312.12	474,543.25	261,059.21
	130.00	343.50	1,594.45	1,908.56	8,987.63	9,207.57	9,177.86	3,126.41	345.03	4,831.82	6,001,617.61
	4,486.81	379.41	1,594.45	1,908.56	8,987.63	9,207.57	9,177.86	3,126.41	345.03	4,831.82	6,001,617.61
	952.19							6,535.36	1,669.66	7,914.72	38,229.28
	\$ 793,369.39	\$ 243,730.21	\$ 596,538.77	\$ 480,633.11	\$ 877,228.61	\$ 1,166,981.54	\$ 1,300,435.72	\$ 1,349,294.39	\$ 1,497,895.80	\$ 1,633,445.32	\$ 17,619,252.62
	97,706.65	93,278.65	139,203.00	127,931.77	122,093.74	137,501.62	131,941.10	163,836.41	177,437.78	159,292.90	2,349,567.40
	41,610.99	43,327.16	45,138.47	52,451.36	60,860.89	66,513.01	71,994.18	88,146.54	87,264.70	88,520.08	1,043,644.61
	20,925.89	12,486.98	21,691.89	16,105.63	17,015.23	6,566.47	21,264.40	51,930.45	33,655.43	38,825.84	695,974.25
	2,699.31	152.50	1,186.80		2,308.76	1,237.18	1,308.19	5,106.00	3,667.21	903.21	23,259.10
						6,535.78	12,232.08	3,234.50			22,002.36
							4,157.74	4,141.75	4,937.84	4,940.43	18,177.76
											958,648.13
											\$ 5,111,273.61
	120,252.25	23,104.06	148,327.26								
	\$ 283,195.09	\$ 172,349.35	\$ 355,547.42	\$ 196,488.76	\$ 202,278.62	\$ 218,354.06	\$ 242,897.69	\$ 316,395.65	\$ 306,962.96	\$ 292,482.46	\$ 1,478,753.85
	11,506.39	67,617.68	43,307.96	40,416.94	32,919.40	26,462.90	30,131.50	62,109.44	162,768.36	211,524.75	264,753.09
	6,156.60	7,195.43	6,767.52	6,566.55	7,627.74	21,089.74	10,634.82	15,173.66	15,262.81	24,766.62	\$ 6,854,780.55
	\$ 300,858.08	\$ 247,162.46	\$ 405,622.90	\$ 243,472.25	\$ 242,825.76	\$ 265,856.70	\$ 283,664.01	\$ 393,678.75	\$ 484,994.13	\$ 528,773.83	\$ 24,474,033.17
	\$ 1,094,227.47	\$ 490,892.67	\$ 1,002,161.67	\$ 724,105.36	\$ 1,120,054.37	\$ 1,432,838.24	\$ 1,584,099.73	\$ 1,742,973.14	\$ 1,982,889.93	\$ 2,162,219.15	GRAND TOTAL







**PLAINTIFF'S EXHIBIT NO. 85.**

To Arthur W. Page  
American Embassy,

London, April 7, 1918.

Dear Arthur:

I daresay you remember this epic:

Old Morgan's wife made butter and cheese;

Old Morgan drank the whey.

There came a wind from West to East

And blew Old Morgan away.

I'm Old Morgan and your mother got ashamed of my wheyness and made the doctor prescribe cream for me. There's never been such a luxury, and anybody who supposes that I am now going to get fat and have my cream stopped simply doesn't know me. So, you see why I'm intent on shredded wheat biscuits. That's about the best form of real wheat that will keep. And there's no getting real wheat-stuff pure and simple, in any other form.

There's no use in talking about starving people—except perhaps in India and China. White men can live on anything. The English could fight a century on cabbage and Brussels sprouts. I've given up hope of starving the Germans. A gut of dogmeat or horse flesh and a potato will keep them in fighting trim forever. I've read daily for two years of impending starvation across the Rhine; but I never even now hear of any dead ones from hunger. Cold steel or lead is the only fatal dose for them.

Therefore I know that shredded wheat will carry me through.

You'll see, I hope, from the clippings that I enclose that I'm not done for yet anyhow. Two speeches a day is no small stunt; and I did it again yesterday—hand running; and I went out to dinner afterward.



It was a notable occasion—this celebration of the anniversary of our coming into the war.<sup>1</sup>

Nobody here knows definitely just what to fear from the big battle; but everybody fears more or less. It's a critical time—very. I am told that that long-range gunning of Paris is the worst form of frightfulness yet tried. The shells do not kill a great many people. But their falling every fifteen minutes gets on people's nerves and they can't sleep. I hear they are leaving Paris in great numbers. Since the big battle began and the Germans have needed all their planes and more in France, they've let London alone. But nobody knows when they will begin again.

Nobody knows any future thing about the war, and everybody faces a fear.

Secretary Baker stayed with me the two days and three nights he was here. He made a good impression but he received a better one. He now knows something about the war. I had at dinner to meet him:

Lloyd George, Prime Minister.

Balfour, Foreign Secretary.

The Chief of Staff.

Lord Derby, War Secretary.

General Biddle, U. S. A., in command at London.

Admiral Sims, U. S. N.

The talk was to the point—good and earnest. Baker went straight back to France and our whole cooperation began. With the first group of four we had conferences besides for two days. His coming was an admirable move.

Yours affectionately,  
W. H. P.

<sup>1</sup> This meeting, on April 6, 1918, was held at the Mansion House. Page and Mr. Balfour were the chief speakers.

From the "LIFE AND LETTERS OF WALTER H. PAGE" by Hendrick, Volume II, page 369.



**PLAINTIFF'S EXHIBIT NO. 114.****Advertising Expense—Shredded Wheat**

Year 1928

**EAST OF ROCKY MOUNTAINS***General Advertising*

Newspapers "A"	\$288,951.35	
Newspapers "B"	170,751.15	
West Newspapers—Union B	4,724.21	
Country Weeklies—B	85,673.24	
Billboards	615.00	
Gratuitous Biscuit	4,860.24	
R. F. D. Special "B" Advertising	15,355.83	
National Magazines	54,819.27	
Juvenile Magazines	3,705.29	
Miscellaneous Magazines	295.50	
Collegiate Publications	10,288.03	
Miscellaneous Publications	2,234.80	
Advertising Salaries	14,828.16	
School Charts	1,086.17	
Teachers Essay Contest	5,370.19	
Booklets	7,089.36	
Roadmaps	2,041.06	
Foyer Demonstrations	20,431.89	
Special Advertising Allowance	9,896.25	
Insert Contest	12,607.48	
Unclassified	8,591.17	
		724,215.64

*Field Advertising*

Miniature Shredder Repairs	258.40
Trade Papers	8,806.69
Booklets	19,237.14
Leaflets	3,692.57



Prizes and Competition	1,800.00
Menus	3,293.90
Cutouts and Hangers	31,161.92
Window Strips	576.17
Blotters	561.24
Advertising with Samples	5,720.96
Decalcomanias	2,192.00
Cartons—Dummy	281.05
Cartons—Jumbo	1,207.26
Field Work—F. Presbrey Co.	5,055.05
Restaurant Signs	710.57
Refund Store Sales	11,102.85
School and Institutional	298.70

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 95,896.47
*Sampling*

Newspaper Sampling Advertising	21,986.51
Sampling	68,627.51
Miniature Shredders	36.69
Food Shows	1,406.65
House to House	330,655.75
Store Sales	29,318.21
Auto Expense	53,713.91

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 505,745.23
**Total**


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 1,325,857.34
**PACIFIC COAST SHREDDED WHEAT**

Selling & Advertising Expense—1928	245,098.00
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**GRAND TOTAL**


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 1,570,955.34



Year 1927

EAST OF ROCKY MOUNTAINS

General Advertising

Newspapers "A" and "B"	\$354,159.37
Gratuitous Biscuit	3,612.98
National Magazines	252,372.20
Juvenile Magazines	21,081.68
Miscellaneous Magazines	3,040.65
Collegiate Publications	13,246.02
Miscellaneous Publications	10,207.63
Advertising Salaries	14,390.45
School Charts	275.55
Teachers Essay Contest	5,011.01
Booklets	7,016.38
Foyer Demonstrations	21,016.76
Unclassified	9,182.09

714,612.77

Field Advertising

Trade Papers	7,653.30
School and Institution Work	600.00
Glass Jars and Globe Bases	361.23
Menus	2,442.41
Special Field Work—F. Pres- brey	6,923.28
Store Advertising — Cutouts, Hangers	32,142.85
Store Advertising — Window Strips	4,018.47
Blotters	2,324.16
Advertising with Samples	6,501.94
Dummy Cartons	620.10
Jumbo Cartons	1,198.57
Store Advertising with Field	26,843.48
Prizes and Competition	2,550.00
Miniature Shredder Repairs	1,576.16

95,755.95



*Sampling*

Newspaper Sampling Advertising	28,393.93
Sampling	90,857.34
Miniature Shredders	12,229.53
Food Shows	3,750.74
House to House	214,986.41
Store Sales	37,244.03
Auto Expense	57,061.13

444,523.11

## Total

1,254,891.83

## PACIFIC COAST SHREDDED WHEAT

Selling &amp; Advertising Expense—1927 204,610.97

## GRAND TOTAL

1,459,502.80

## PLAINTIFF'S EXHIBIT NO. 115.

Expenditures—Shredded Wheat  
T. M. Advertising

## Year 1929

Newspapers	496,403.52	71.32
College Papers	4,516.07	.65
Trade Papers	2,093.26	.30
Magazines	73,481.11	10.56
Insert Contest	34,643.86	4.98
Sundries	10,646.45	1.53
Grocery Store Advertising	49,179.40	7.07
Donations	682.29	.10
Radio	7,538.78	1.08
Walls & Bulletins	123.60	.02
Agency Walls & Bulletins	375.64	.05
Foyer and Visitors	13,246.08	1.90
Carton Slips	3,085.80	.44
	696,015.86	100.00



Year 1930

Newspapers	545,181.68	67.842
College Papers	11,027.26	1.372
Trade Papers	4,566.77	.568
Magazines	213,557.57	26.575
Insert Contest	2,728.55	.340
Sundries	2,732.64	.340
Grocery Store Advertising	8,990.92	1.119
Walls and Bulletins	25.00	.003
Agency Walls & Bulletins	349.70	.044
Foyer and Visitors	8,643.28	1.075
Carton Slips	5,804.31	.722

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	803,607.68	100.00
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Year 1931

Newspapers	545,121.67	64.18
College Papers	3,027.84	.36
Trade Papers	3,802.12	.45
Magazines	239,036.28	28.14
Sundries	1,377.93	.16
Grocery Store Advertising	30,956.75	3.65
Agency Walls & Bulletins	380.96	.04
Foyer and Visitors	7,184.78	.85
Carton Slips	183.58	.02
Radio	18,286.13	2.15

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	849,358.04	100.00
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Year 1932

Newspapers	440,542.09	65.41
Magazine and Farm Papers	163,353.72	24.25
Grocery Store Advertising	34,983.91	5.20
Trade Papers	4,456.46	.66
Foyer and Visitors	6,647.40	.99
L Posting and Vehicle	3,778.69	.56
Sundries	5,721.36	.85
Agency Walls & Bulletins	476.76	.07
Carton Inserts	6,016.77	.89
College Papers	7,604.60	1.12

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	673,581.76	100.00
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**PLAINTIFF'S EXHIBIT NO. 149.**

**The Natural Food Company  
The Shredded Wheat Company  
National Biscuit Company  
Sales in the United States of Cases  
Containing 36 Packages**

YEAR	CASES	YEAR	CASES
1896	37,172	1915	1,040,368
1897	88,512	1916	1,275,973
1898	142,916	1917	1,390,797
1899	230,173	1918	1,293,510
1900	291,780	1919	1,790,830
1901	364,909	1920	1,912,019
1902	465,118	1921	1,949,310
1903	472,742	1922	2,035,922
1904	468,588	1923	1,947,957
1905	518,125	1924	2,107,197
1906	578,638	1925	2,324,815
1907	596,307	1926	2,411,022
1908	587,915	1927	2,477,262
1909	674,770	1928	2,521,751
1910	767,985	1929	2,496,501
1911	846,784	1930	2,321,076
1912	889,623	1931	2,176,291
1913	936,362	1932	1,517,650
1914	1,004,110		



**PLAINTIFF'S EXHIBIT NO. 150.**

**The Natural Food Company  
The Shredded Wheat Company  
National Biscuit Company  
Sales in the United States of Cases  
Containing 36 Packages**

YEAR	CASES	ADVERTISING EXPENDITURES
1896	37,172	\$ 115,431.38
1897	88,512	90,821.59
1898	142,916	128,154.17
1899	230,173	211,725.72
1900	291,780	305,936.28
1901	364,909	.....
1902	465,118	388,768.48
1903	472,742	580,867.23
1904	468,588	436,241.44
1905	518,125	454,055.98
1906	578,638	482,132.82
1907	596,307	551,951.75
1908	587,915	527,191.63
1909	674,770	534,946.75
1910	767,985	591,676.02
1911	846,784	622,264.80
1912	889,623	655,934.69
1913	936,362	699,620.02
1914	1,004,110	786,348.52
1915	1,040,368	801,810.70
1916	1,275,973	810,500.34
1917	1,390,797	854,018.42
1918	1,293,510	423,645.17
1919	1,790,830	759,126.85
1920	1,912,019	618,996.04
1921	1,949,310	957,154.54



YEAR	CASES	ADVERTISING EXPENDITURES
1922	2,035,922	1,242,159.45
1923	1,947,957	1,295,951.06
1924	2,107,197	1,437,199.57
1925	2,324,815	1,601,276.07
1926	2,411,022	1,783,791.98
1927	2,477,262	1,459,502.80
1928	2,521,751	1,570,955.34
1929	2,496,501	696,015.86 *
1930	2,321,076	803,607.68 *
1931	2,176,291	849,358.04 *
1932	1,917,650	973,581.76 #

\* does not include sampling and field expenses

# includes \$300,000.00 for sampling



*M. G. Davis*  
*copy*  
**Kellogg's**

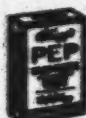
**PRICES TO JOBBERS**

Except in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Counties of Brewster, California, El Paso, Harbison, Jeff Davis, Loving, Pecos, Presidio, Reeves, Ward, Winkler, in Texas.



**KELLOGG'S CORN FLAKES** Per Case

No. 138	36	8 oz. Pkgs., Standard size	....\$2.50
No. 124	24	13 oz. Pkgs., Large size	..... 2.50
No. 102	100	1 oz. Pkgs., Individual size	... 1.70
No. 105	50	1 oz. Pkgs., Individual size	... .85



**KELLOGG'S PEP**

No. 224	24	10 oz. Pkgs., Standard size	...\$1.75
No. 250	50	1 1/4 oz. Pkgs., Individual size	.. .85

**KELLOGG'S WHOLE WHEAT BISCUITS**

No. 324	24	12 1/2 oz. Pkgs., Standard size	....\$2.05
No. 380	50	1 1/2 oz. Pkgs., Individual size	.. .90



**KELLOGG'S WHEAT KRUMBLES**

No. 412	12	8 oz. Pkgs., Standard size	.....\$1.15
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**KELLOGG'S RICE KRISPIES**

No. 524	24	8 oz. Pkgs., Standard size	.....\$1.90
No. 550	50	1 oz. Pkgs., Individual size	..... .85

**KELLOGG'S BRAN FLAKES**

No. 624	24	10 oz. Pkgs., Standard size	...\$1.57 1/2
No. 650	50	1 1/4 oz. Pkgs., Individual size	.. .85

**KELLOGG'S KAFFEE HAG—Steel Cut**

No. 712	12	1 lb. cans, Standard size	.....\$4.80
No. 708	6	1 lb. cans, Standard size	..... 2.40
No. 702	24	2 oz. cans, Hotel size	..... 2.20

**KELLOGG'S WHOLE WHEAT FLAKES**

No. 914	24	10 oz. Pkgs., Standard size	....\$1.80
No. 950	50	1 oz. Pkgs., Individual size	.... .65

**KELLOGG'S ALL-BRAN**

No. 1412	12	16 oz. Pkgs., Large size	.....\$1.90
No. 1424	24	10 oz. Pkgs., Small size	..... 2.30
No. 1450	50	3/4 oz. Pkgs., Individual size	.. .85

**PRICES SUBJECT TO CHANGE WITHOUT NOTICE**

**TERMS:** 30 days net, less 2% ten days from date of invoice.  
 Freight prepaid on all shipments to jobbers.

Straight car discount	..... 1 1/2%
Pool car quantity discount	..... 1%

Straight car to take the 1 1/2% quantity price must be of at least sufficient weight to be accepted by the railroad carriers as minimum car, and must be billed to one consignee, at one destination.

**KELLOGG SALES COMPANY**

**Battle Creek, Michigan**

1A

Feb. 1, 1933

202  
 3/17/33









STORE MANAGERS:

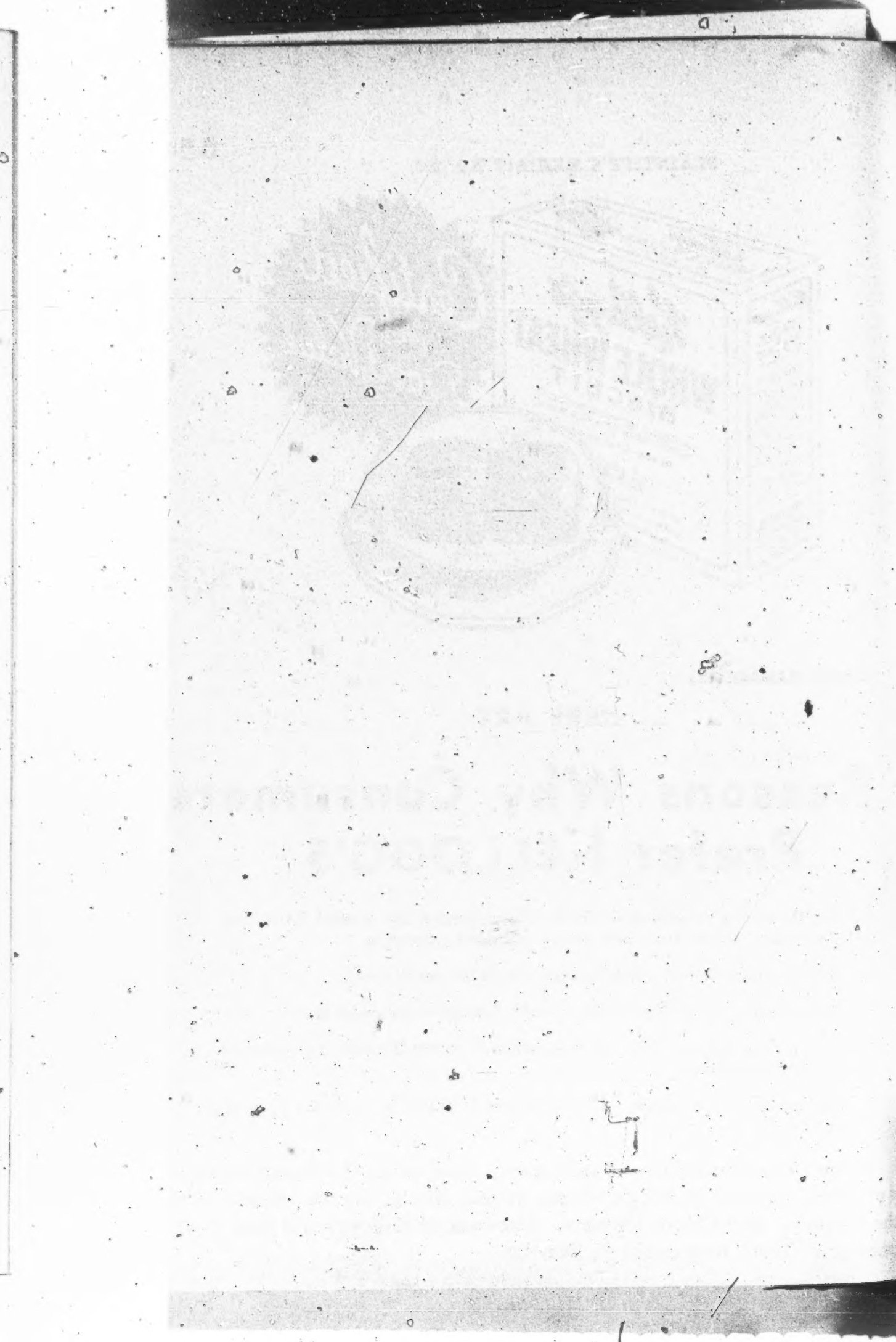
HERE ARE

## 5 Reasons Why Consumers Prefer KELLOGG'S

1. Double toasted! Kellogg's Whole Wheat Biscuit are toasted brown on both sides! They are much crisper and more appetizing.
2. More convenient size. Two biscuits just fit the cereal bowl.
3. Economical. 15 biscuits to the package instead of the usual dozen.
4. Rich in food value. Every package certified by the Medical Arts Laboratory of Philadelphia.
5. Kellogg flavor and quality. Delicious taste baked in by a special Kellogg process.

Feature these points to our customers. Cash in on the fine qualities of this product. Display Kellogg's Whole Wheat Biscuit on the counter and in the window. Build Floor Displays. Get back of Kellogg's and push them aggressively. Have your clerks do likewise.







**PLAINTIFF'S EXHIBIT NO. 237.**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE SHREDDED WHEAT COMPANY, Complainant, —against— THE HUMPHREY CORNELL COMPANY and FREDERICK H. TOWNE, Defendants.	} IN EQUITY No. 1436.
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The order entered herein on June 12, 1918 on mandate of the United States Circuit Court of Appeals for the Second Judicial Circuit is hereby re-settled to read as follows:

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE SHREDDED WHEAT COMPANY, Complainant, —against— THE HUMPHREY CORNELL COMPANY and FREDERICK H. TOWNE, Defendants.	} IN EQUITY No. 1436.
--	--------------------------

**Order on Mandate**

A final decree having been entered in the above entitled cause in favor of complainant on the 25th day of May, 1917, and an appeal from said decree having been duly allowed and prosecuted in the United States Circuit Court of Appeals for the Second Judicial Circuit, from which a mandate has been duly issued to this Court ordering that the said decree be modified and that



as thus modified the decree be affirmed without costs, and said mandate having been duly entered in this Court:

AND IT APPEARING from the opinion of the said Court of Appeals that the defendants' cartons are so different from the complainant's that no confusion is possible in the sale of defendants' biscuits in the cartons; and that only commercial experience can finally determine the possibility of marking, wrapping or tagging the individual biscuits, which may be sold outside of the cartons, without operating to give the complainant such advantage in the market as would substantially handicap the defendants in business of selling biscuits outside of the cartons;

NOW, THEREFORE, UPON CONSIDERATION THEREOF, and in obedience to said mandate and in cognizance with the opinion of the said Court of Appeals herein,

IT IS ORDERED that the said decree heretofore entered in this cause be and the same is hereby modified to read as follows:

"I. That complainant or its predecessors have for upwards of twenty-three years past been engaged in the manufacture and sale of a wholewheat biscuit of a particular form, shape, size and color; and during all said period, until the acts of these defendants, have been the sole manufacturers of a wholewheat biscuit of such form, shape, size, color and character.

II. That the said biscuit as manufactured and sold by complainant in such form, shape, size and color, has become widely and universally known as the product of complainant, and known to the public under the name of 'Shredded Wheat' or 'Shredded Wheat Biscuit', which said words were originally applied to said product by complainant.



III. That the said form, shape, size and color of said biscuit have come, through long and exclusive use and advertisement, to have the meaning and significance only of the product and biscuit of the complainant.

IV. That the defendants' cartons are so different from the complainant's that no confusion is possible in the sale of defendants' biscuits in the cartons.

V. That the defendants' biscuits are of the same form, shape, size and color as the said biscuit manufactured and sold by the complainant, and, therefore, all said defendants' biscuits that shall reach the last purchaser outside of their cartons must either bear a letter, cross or other plain symbol, impressed in their substance, or have fastened upon them a wrapping, tag or band, stating that they are made by the Ross Food Company.

VI. That an injunction issue out of and under the seal of this Court restraining and enjoining defendants, The Humphrey Cornell Company and Frederick H. Towne, their privies, agents, servants, employees, attorneys and representatives, from the sale of all wholewheat biscuits reaching the last purchaser outside of their cartons, to wit, wholewheat biscuits of the same form, shape, size, color and appearance as the biscuit manufactured by the complainant, or in imitation thereof, unless the said biscuits reaching the last purchaser either bear a letter, cross or other plain symbol impressed in their substance, or have fastened upon them a wrapping, tag, or band stating that they are made by the Ross Food Company or other manufacturer.

VII. That the Ross Food Company, the manufacturer of said biscuit, has assumed the expense of defending this action; and that the said corporation, and Andrew Ross, president thereof, and Ralph Valentine, superintendent thereof, were present and participated in the trial of the issues herein, in behalf of defendants, and are privies to the judgment of this Court;



VIII. That the evidence shows that the sales of the defendants The Humphrey Cornell Company and Frederick H. Towne are so small in amount as not to justify the expense of a reference to a master for an accounting.

IX. That the complainant is entitled to recover against the defendants the costs and disbursements of this action, taxed by the clerk of this Court in the sum of \$623.90 and execution issue therefor.

AND IT IS FURTHER ORDERED that the injunction heretofore granted in the above entitled cause be and the same hereby is modified so that the said injunction shall read:

"Now, THEREFORE, we do strictly and perpetually enjoin you, the said Humphrey Cornell Company, and the said Frederick H. Towne, your privies, agents, servants, employees, attorneys and representatives, under the pains and penalties which may fall upon you and each of you, that you forthwith and forever desist and refrain from selling all wholewheat biscuits reaching the last purchaser outside of the cartons, to wit, wholewheat biscuits of the same form, shape, size, color and appearance as the biscuit manufactured by the plaintiff, or in imitation thereof, unless each of the said biscuits reaching the last purchaser, either bears a letter, cross or other plain symbol impressed in their substance, or have fastened upon them a wrapping, tag or band stating that they are made by the Ross Food Company, or other manufacturer;"

AND IT IS FURTHER ORDERED, that the said injunction, as modified hereby continue in force until the further order of the Court:

AND IT IS FURTHER ORDERED, that the defendants at the end of six months from the date hereof may apply to this court to be relieved of the requirement and



injunction herein to mark, wrap, tag or band the said biscuits reaching the last purchaser outside of the cartons, upon showing that after a bona fide trial of all possible expedients, the manufacturer of defendants' biscuits cannot comply with the said requirement and injunction except at an expense which would make impossible any continued competition in the business of selling biscuits outside the cartons with any assurance of reasonable profit.

EDWIN L. GARVIN

U. S. D. J.

August 21, 1919.

The re-entry of the foregoing order in the above form is hereby assented to.

WILLIAM C. BREED

Of Counsel for Complainant,

GEARY DAVIS & KEEFE

Solicitors for Defendants.

New York, August 19 1919.

A true copy,

(Seal) Attest:

C. E. PICKETT Clerk.



## Endorsement:

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE SHREDDED WHEAT COMPANY,  
Complainant,  
—against—

THE HUMPHREY CORNELL COMPANY  
and FREDERICK H. TOWNE,  
Defendants.

Copy

## ORDER

BREED, ABBOTT & MORGAN  
32 Liberty Street, New York  
Of Counsel for Complainant.

To

Filed 21 August 1919.

C. E. PICKETT  
Clerk.









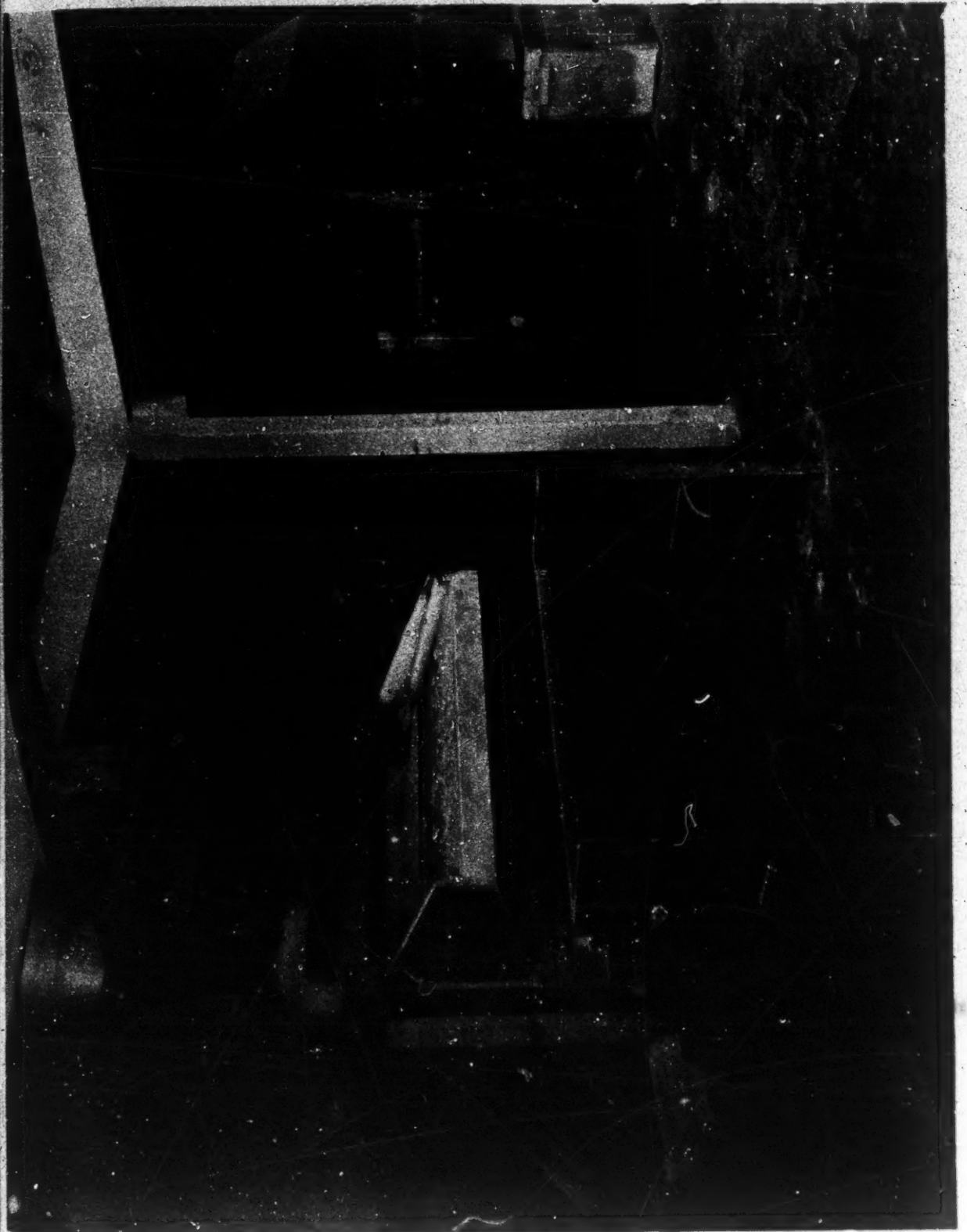












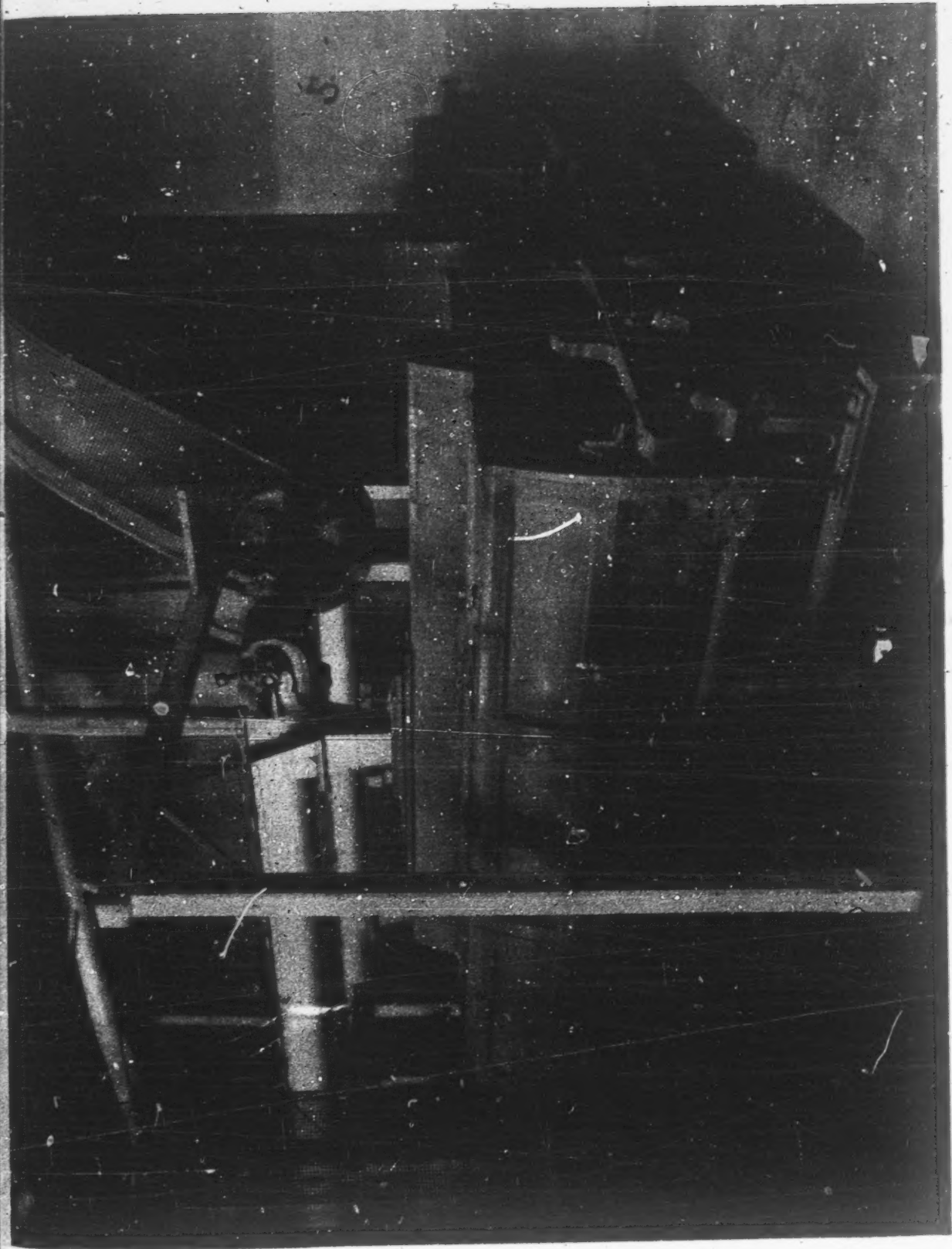








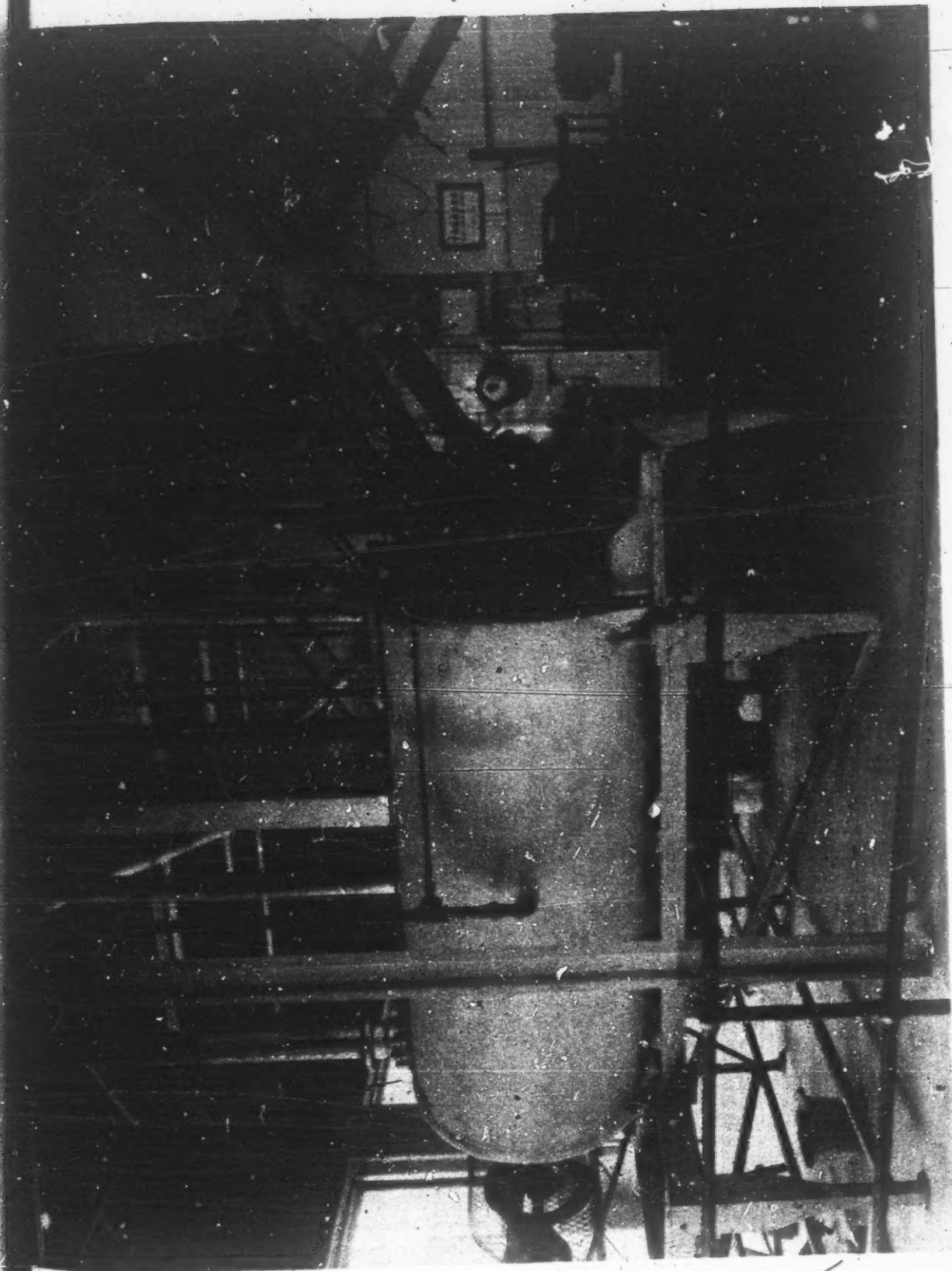




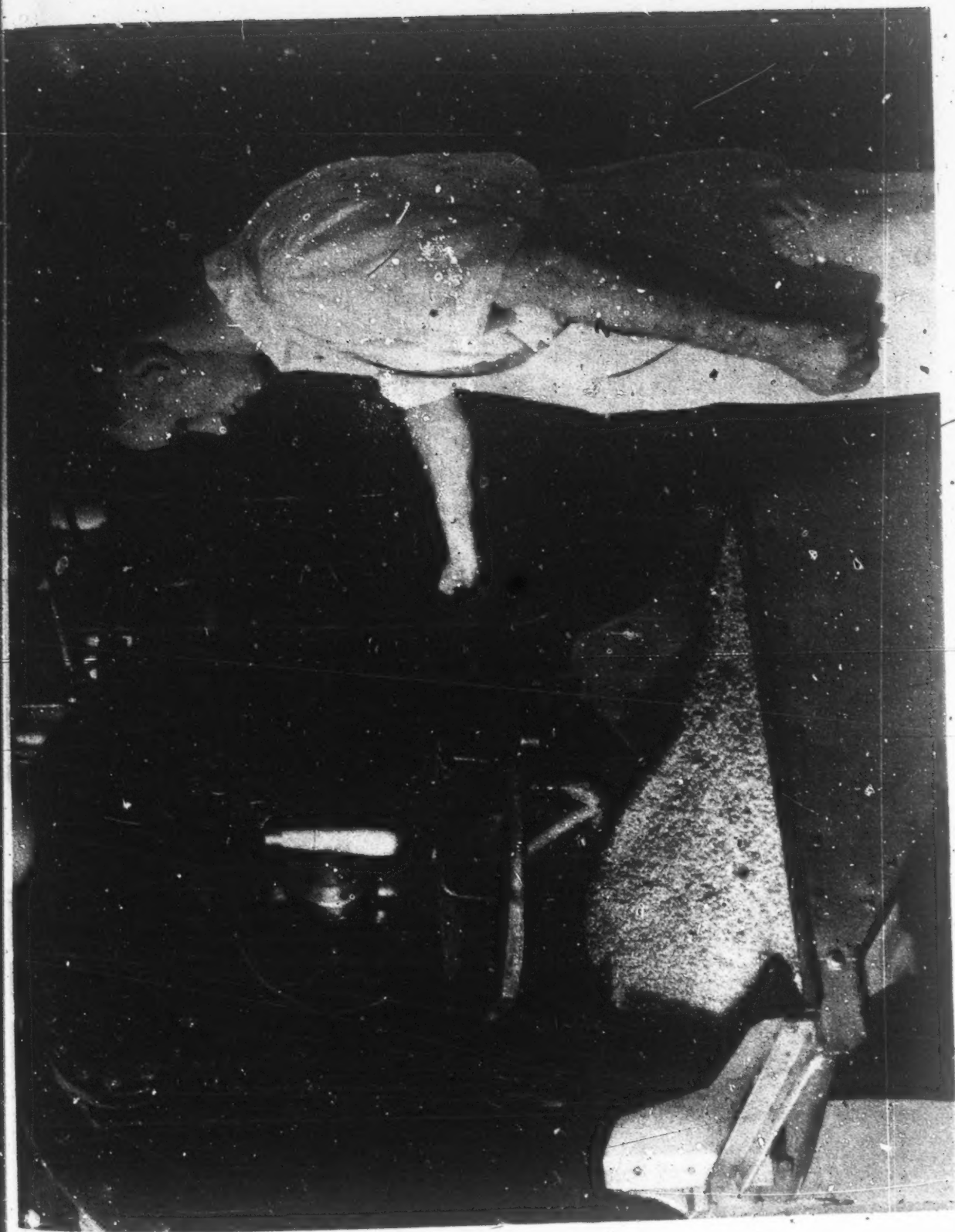




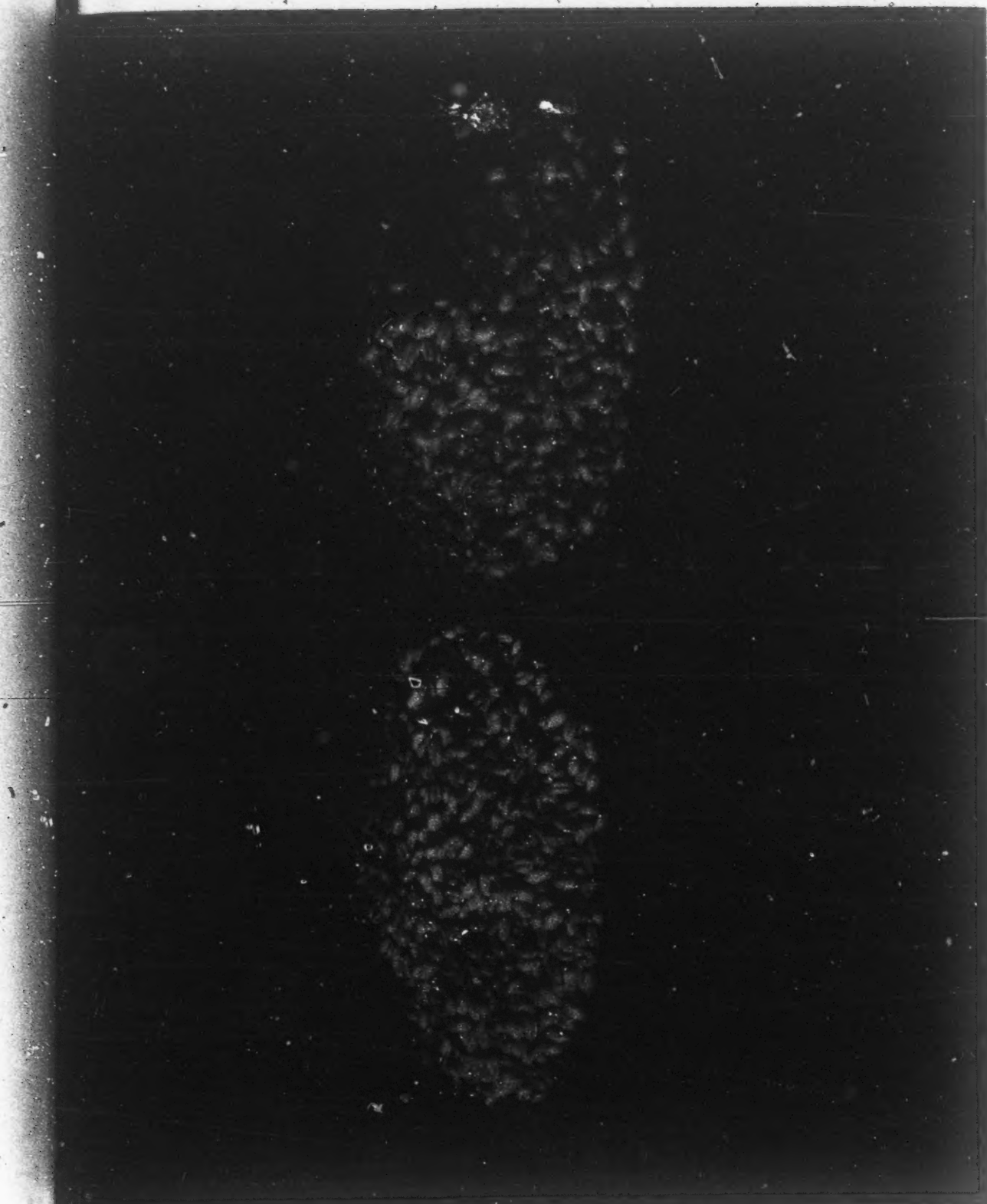




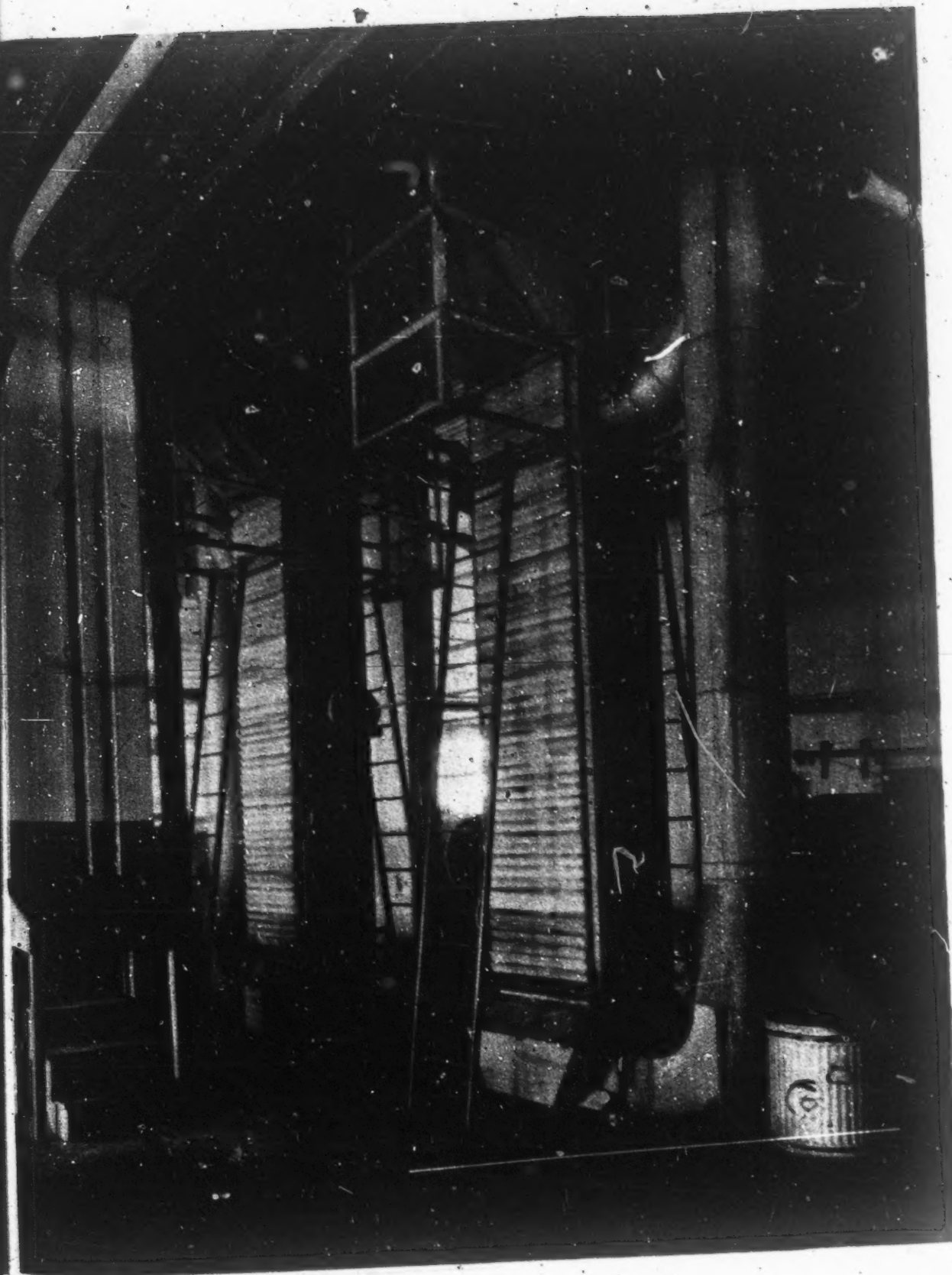




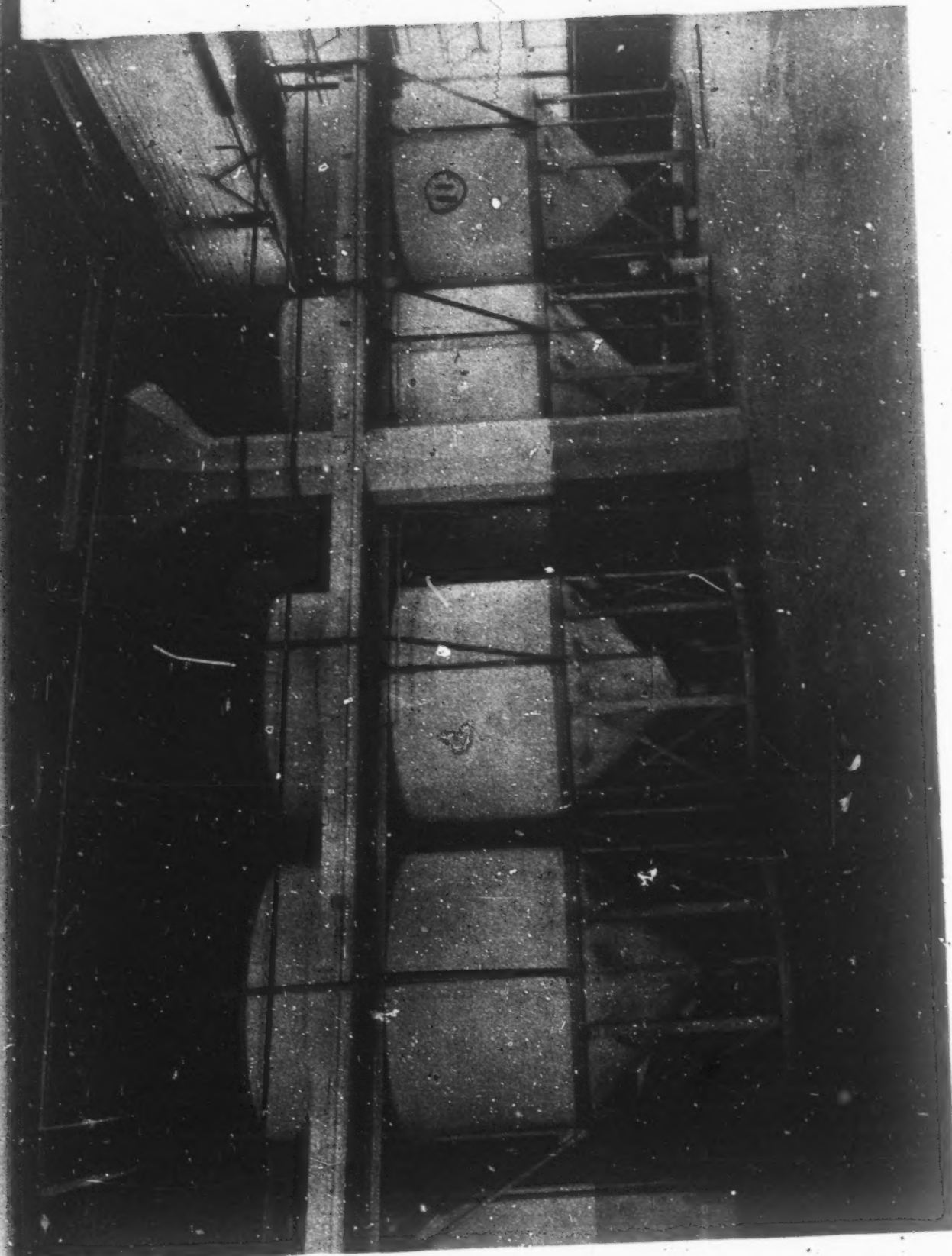




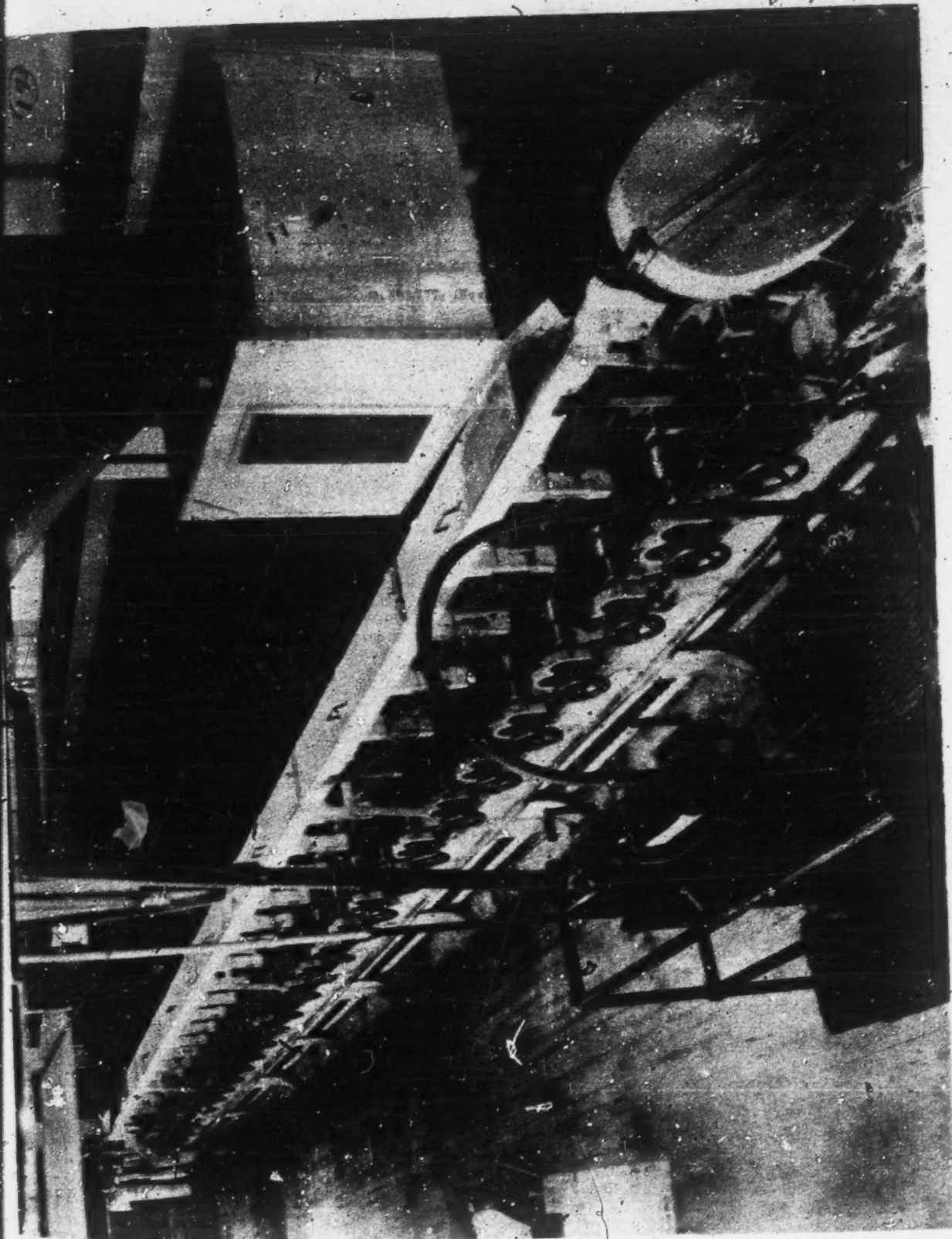












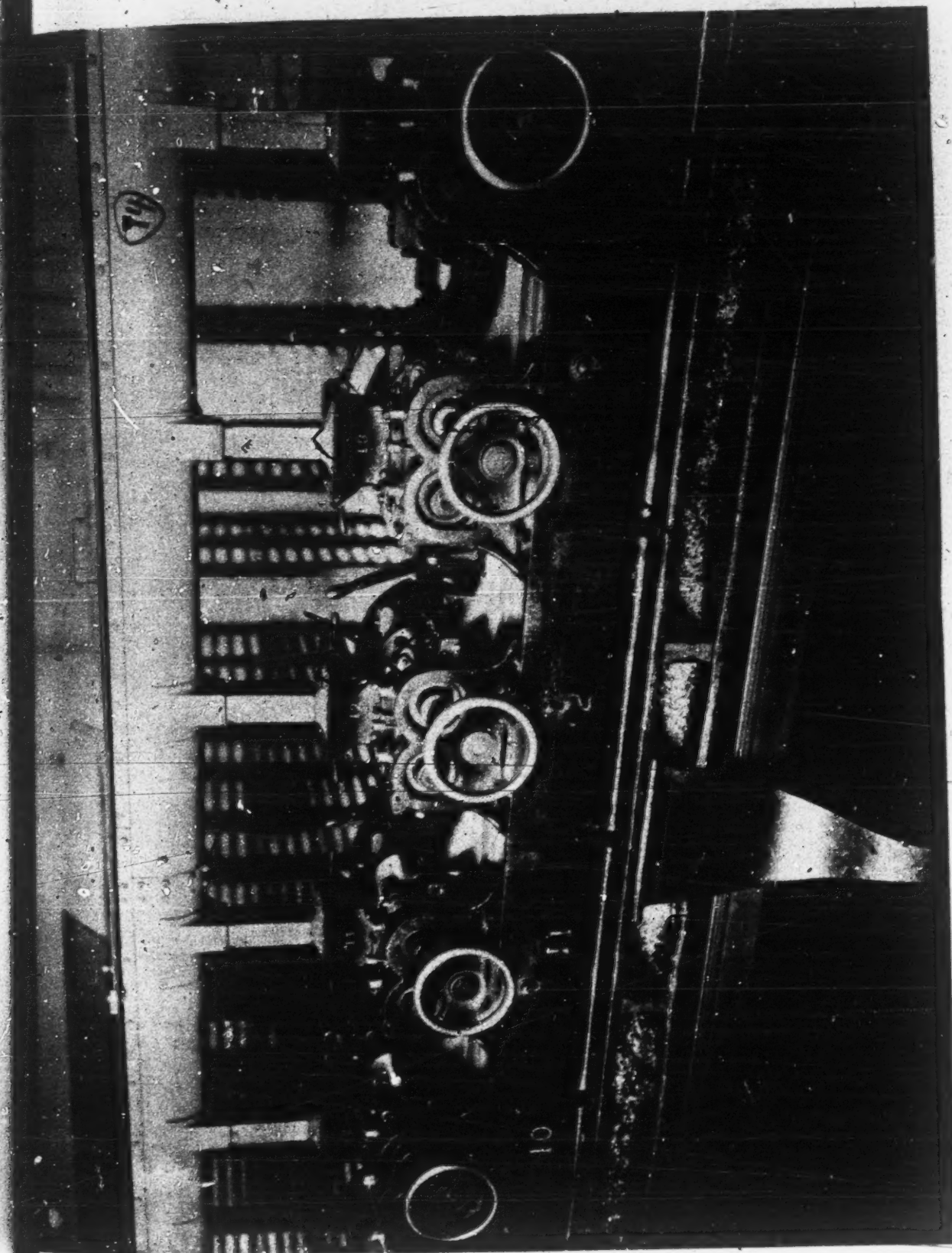


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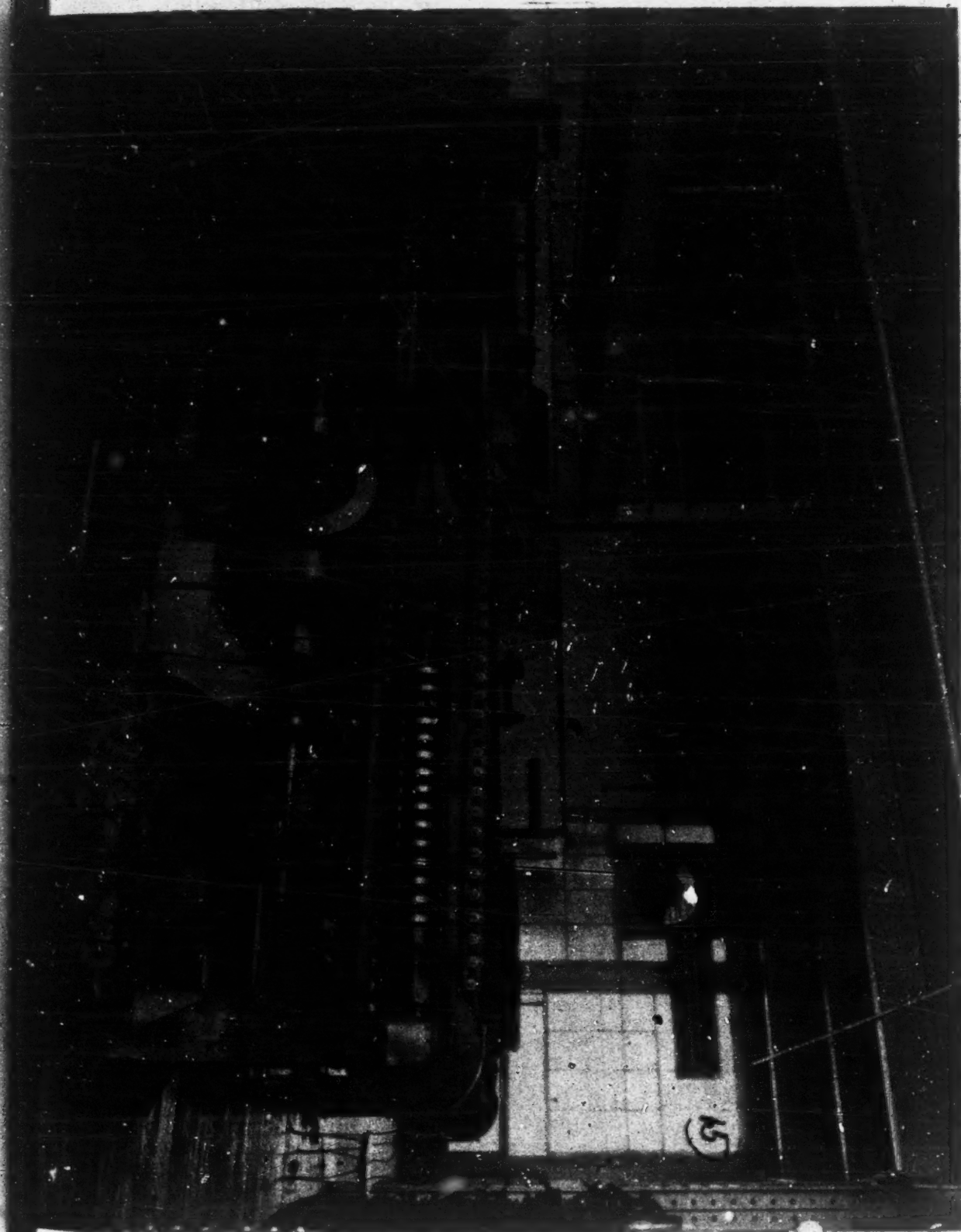


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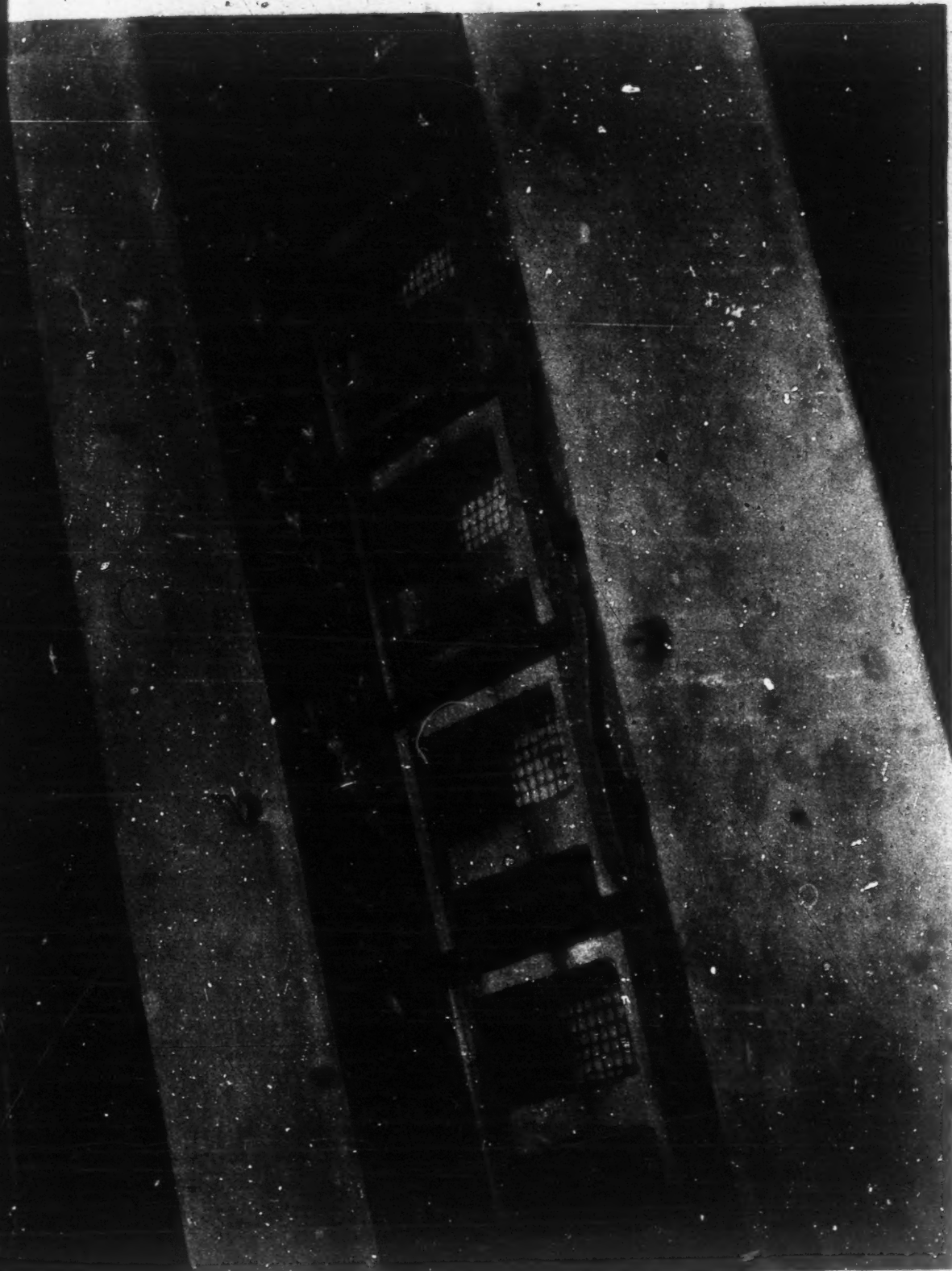




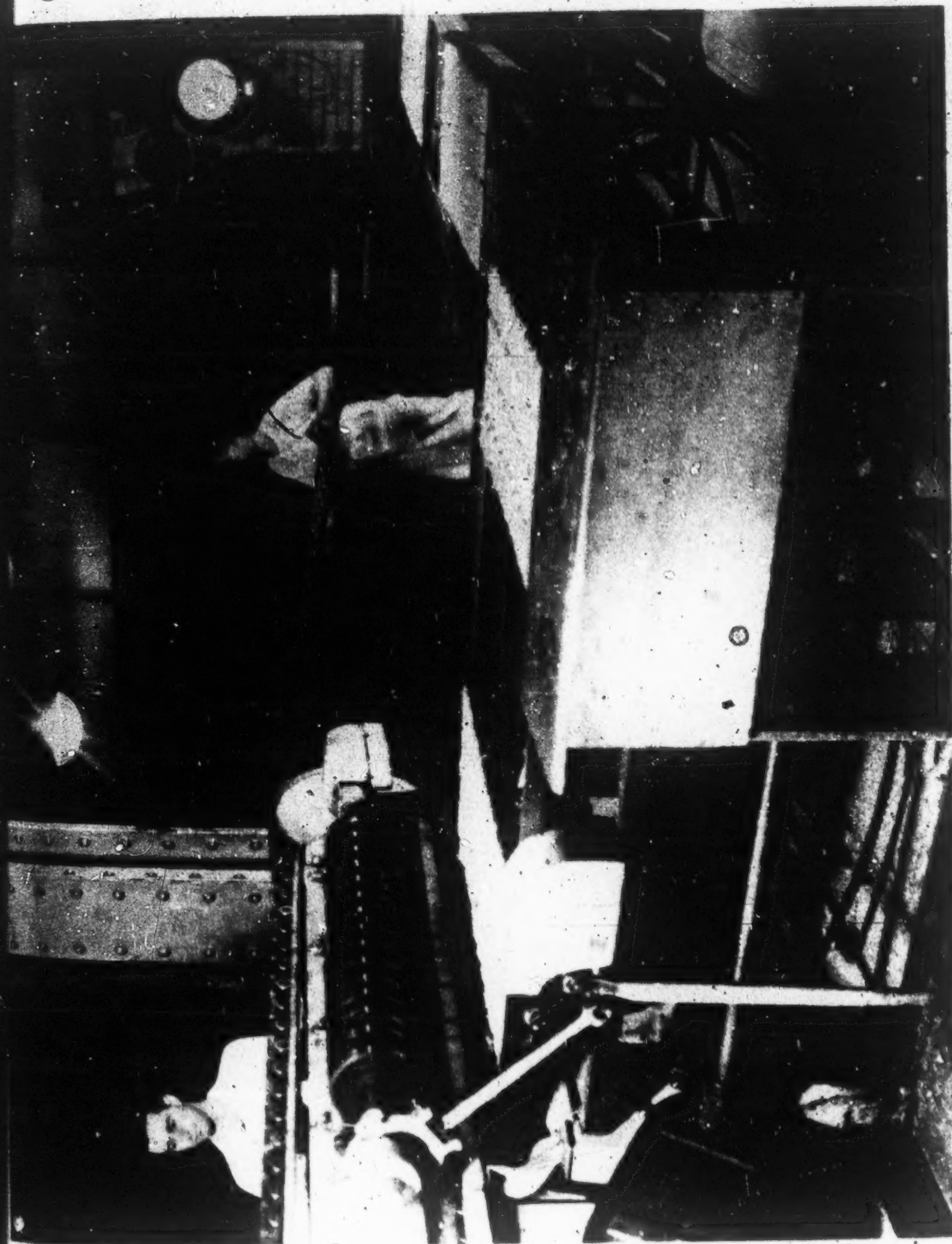
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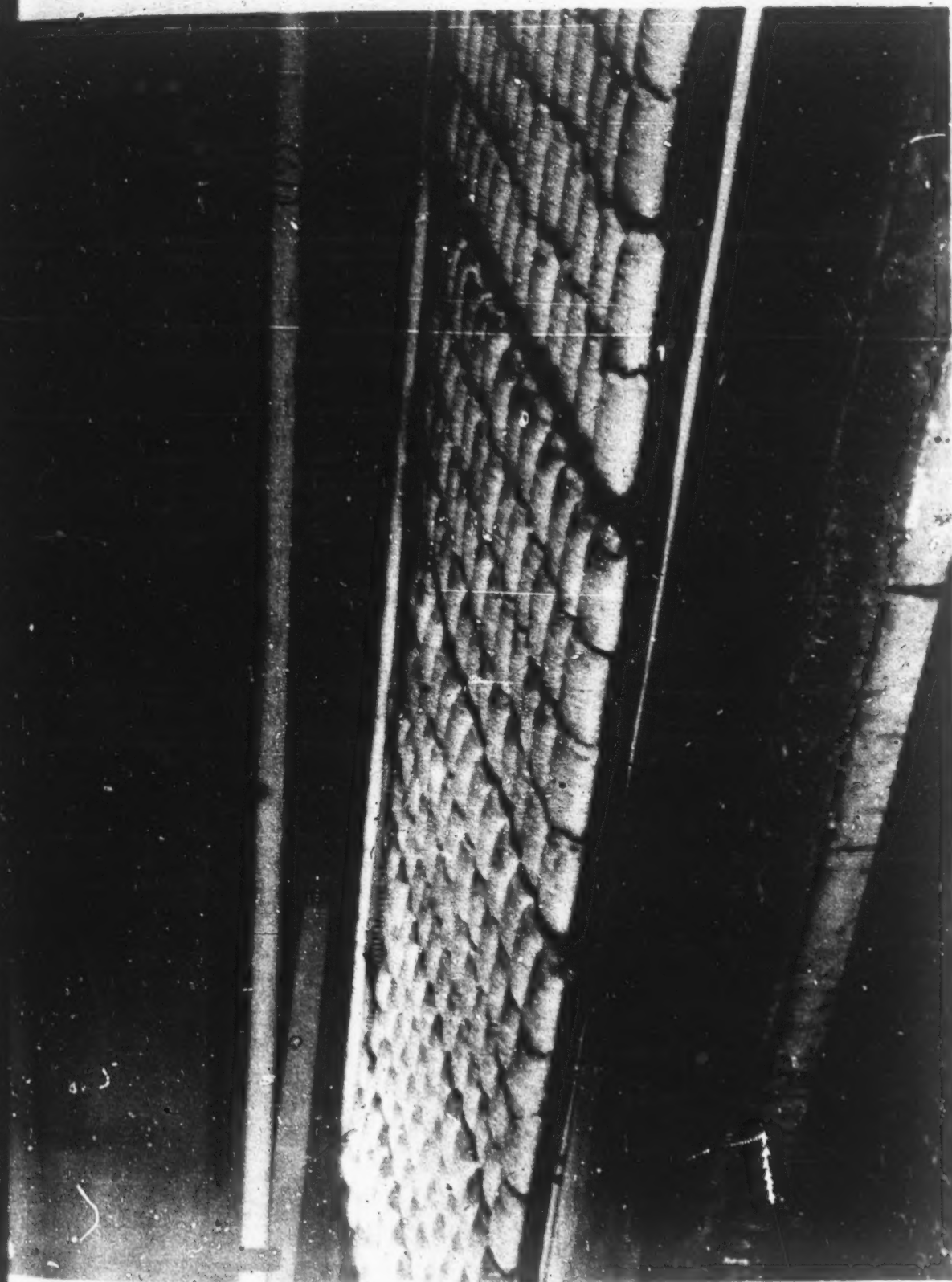








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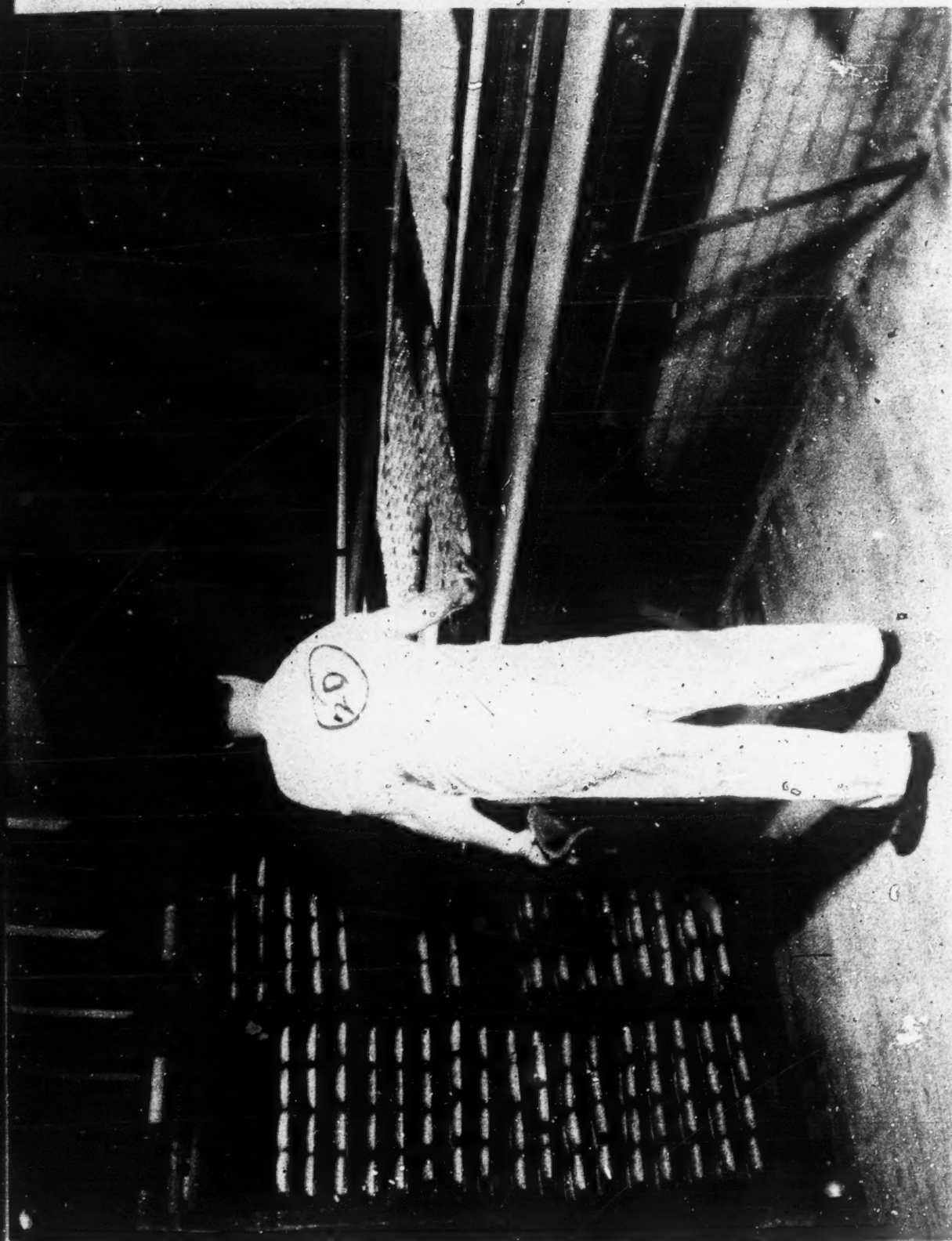






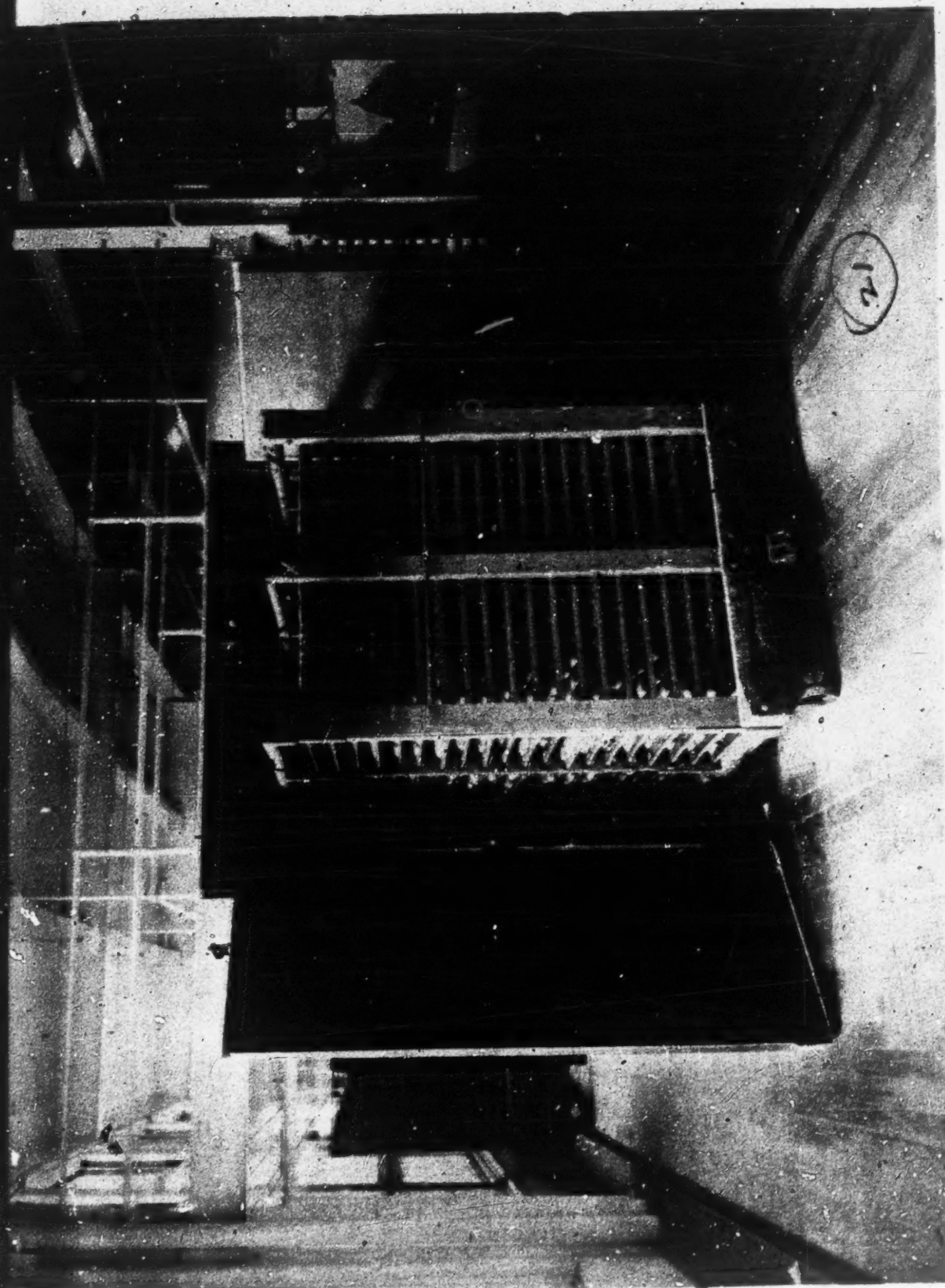


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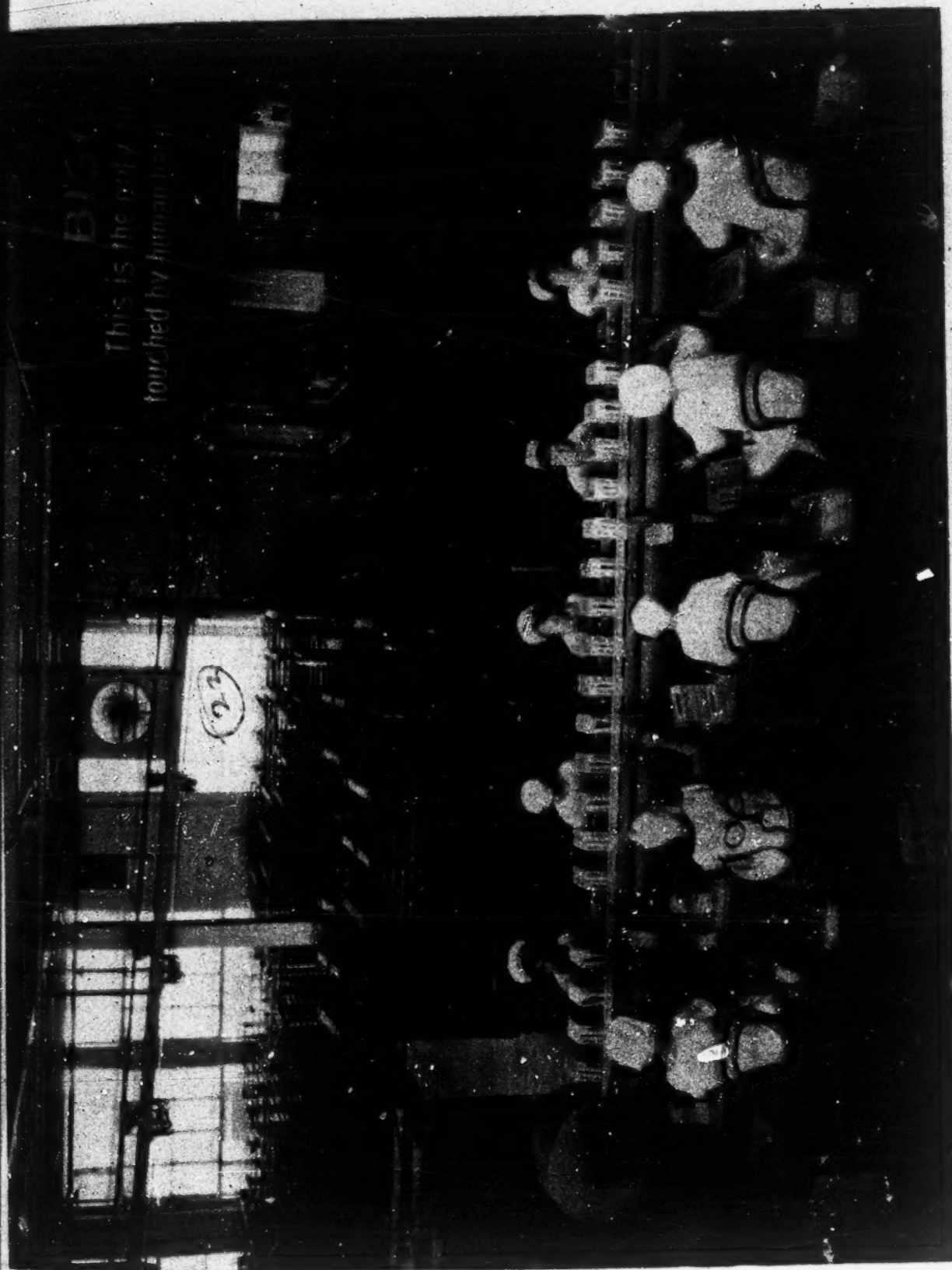




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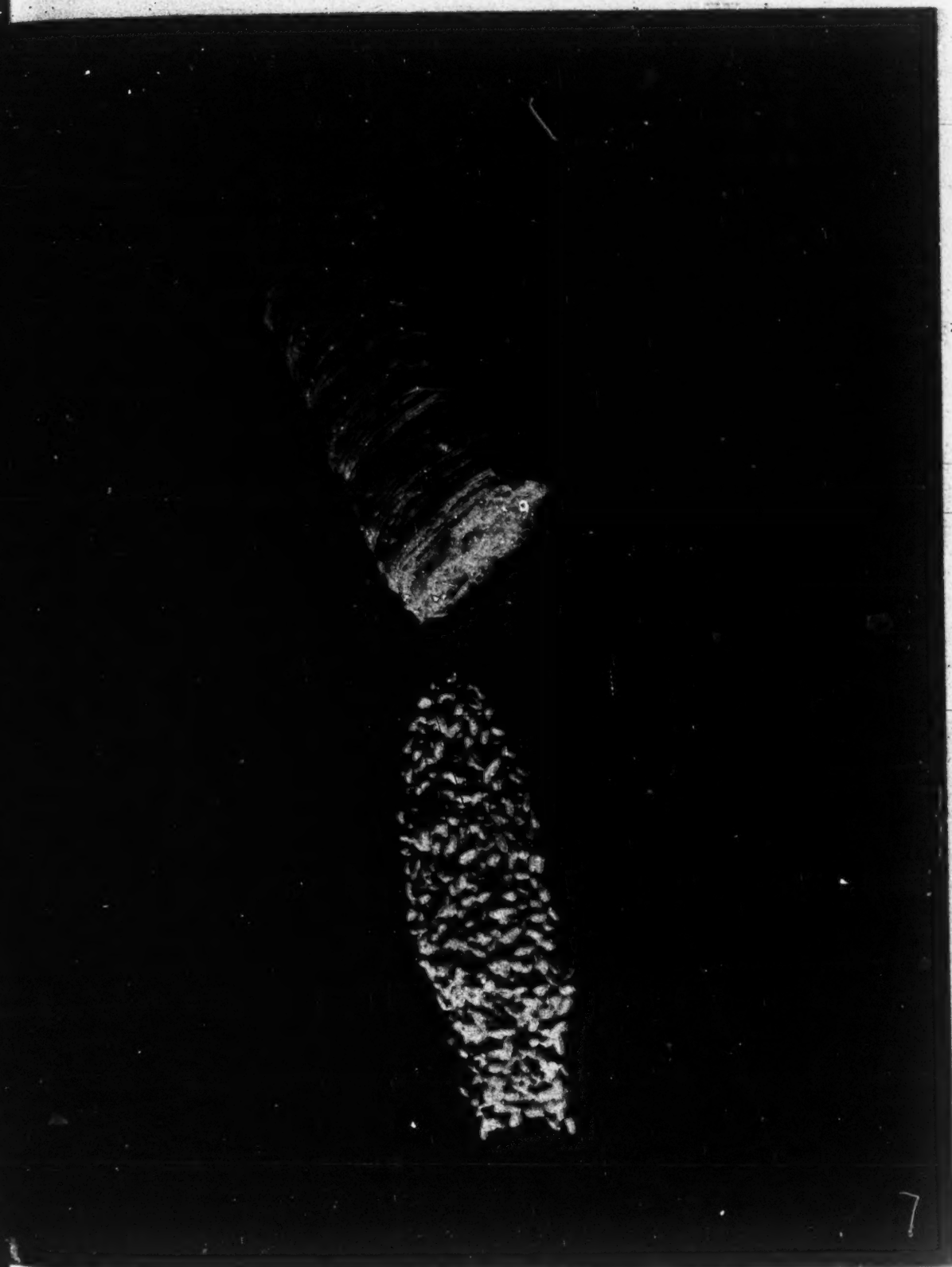


BIG  
This is the only /  
touched by human hand







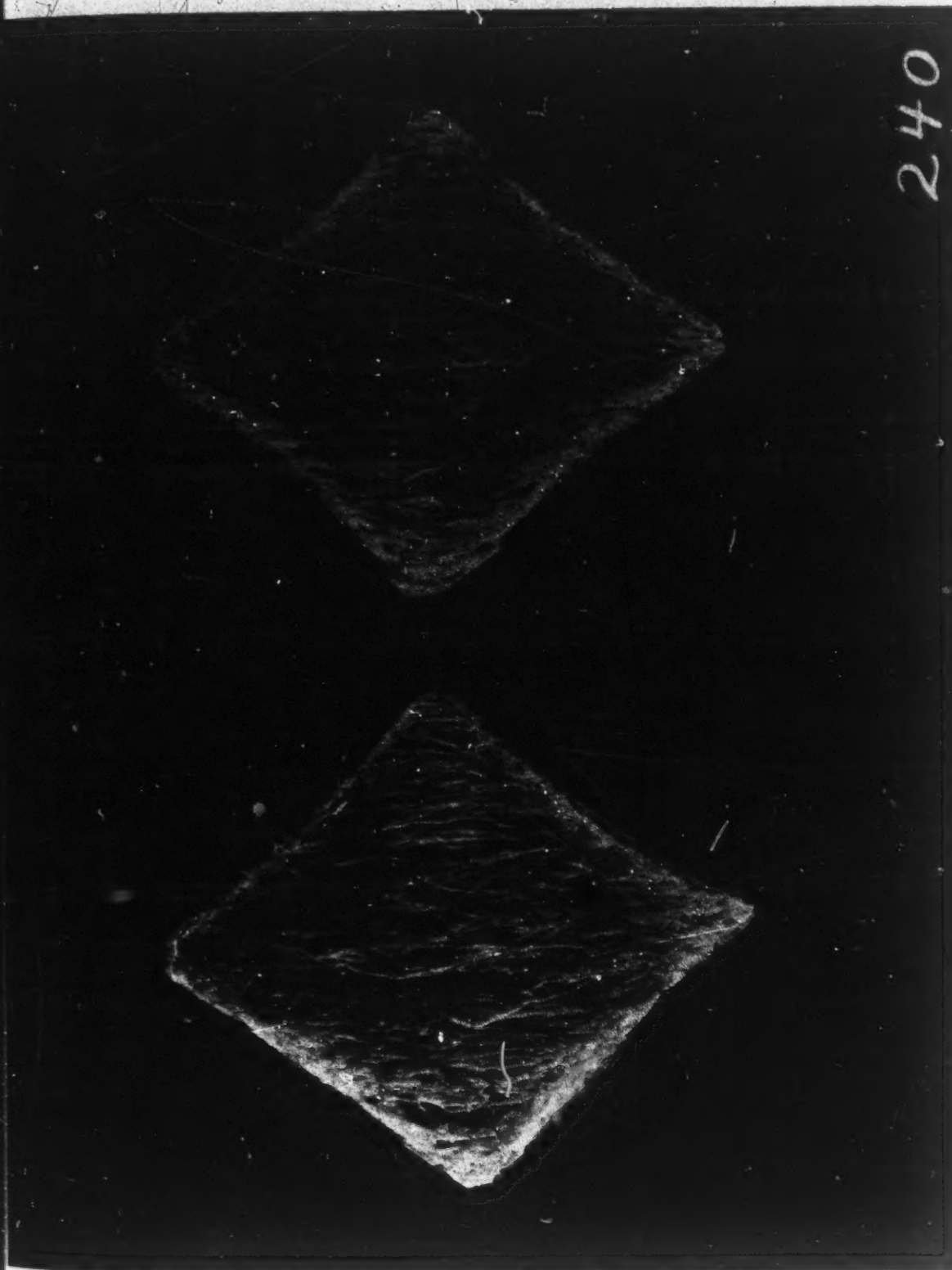




PLAINTIFF'S EXHIBIT NO. 240-A.

111

240





PLAINTIFF'S EXHIBIT NO. 241-A.

113

241





PLAINTIFF'S EXHIBIT NO. 242-A.

115

242

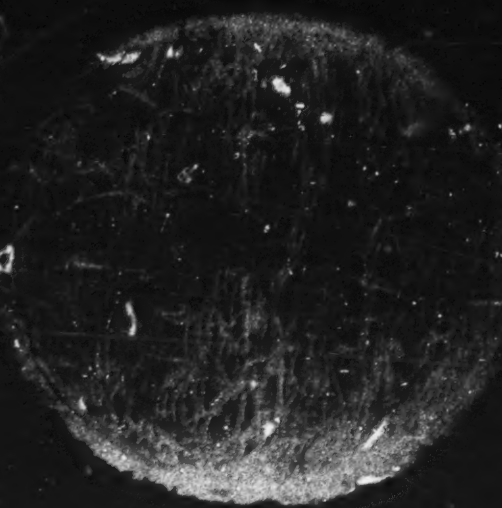
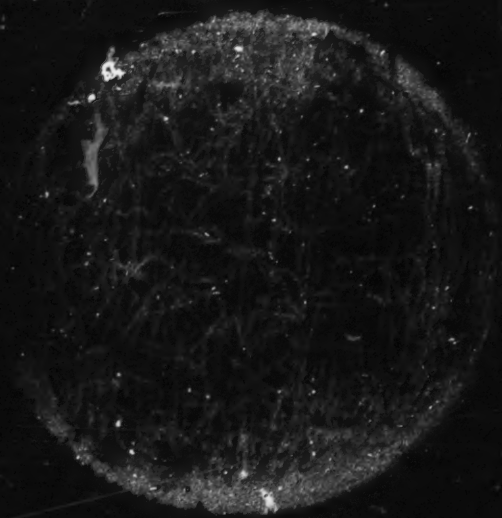




PLAINTIFF'S EXHIBIT NO. 243-A.

117

243





PLAINTIFF'S EXHIBIT NO. 244-A.

119





PLAINTIFF'S EXHIBIT NO. 245-A.

121

245



PLAINTIFF'S EXHIBIT NO. 247.  
TAMPA MORNING TRIBUNE.  
(Saturday, July 9, 1932.)

# PIGGLY WIGGLY

**SUGAR** 1-lb. Cloth Bag **21c**

**COFFEE** Del Monte, lb. **27c**

**COFFEE** 7 A. M., lb. **19c**

Senate  
**Coffee**

Lb.

**29c**



**MILK**

Federal Brand,  
5 Tall Cans

**23c**

**MILK**

Libby's,  
5 Tall Cans

**27c**

**WESSON OIL** Pint **19c** Quart **37c**  
**CRISCO, 3-Lb. Can . . . . 49c**

**PEANUT BUTTER, two 1-lb. jars, 19c**

**BUDWEISER MALT, per can . . . . 45c**

**BOTTLE CAPS, 1 gross pkg. . . . . 19c**

**SUNSWEEP PRUNES . . . . . 17c**

Large Size, 2 1-lb. Pkgs.

Del Monte—2 Large Cans  
**SLICED PINEAPPLE . . . . . 29c**

2 Large Cans  
**ROSEDALE PEACHES . . . . . 29c**

Fairy—3 Bars  
**TOILET SOAP . . . . . 12c**

**Kellogg's Shredded Wheat, pkg. 9c**

**Miller's Corn Flakes, 2 pkgs. . . . 13c**

**Comet Brown Rice Flakes, 3  
pkgs. . . . . 22c**







PLAINTIFF'S EXHIBIT NO. 248.  
THE TAMPA DAILY TIMES.  
(Friday, July 8, 1932.)

There's a Piggly  
Wiggly Near  
Your Home

# PIGGLY WIGGLY

Specials Friday  
P. M. and  
Saturday

Pineapple Del Monte 2 Large cans 29¢

~~PEACHES ROXBALL 2 Large Cans 29¢~~

KELLOGG'S  
SHREDDED WHEAT pkgs. 9¢



Corn Flakes ~~16-oz. 13¢~~

~~CORN SCOTT BROTHERS 3 Medium Cans 25¢~~

JELLY 25¢  
GRAPE ..... 16-OZ.  
QUINCE ..... JAR  
GOLDEN SUN .....  
CRABAPPLE .....

SUNSWET  
PRUNES  
2 1/2 lb. size  
2 Packages  
for ..... 17¢



P & G  
SOAP  
5 for 14¢



OCTAGON SOAP  
Powder 13¢  
5 Small Pkgs. ....

FAIRY TOILET  
SOAP 3 Bars 12¢

WELSH'S GRAPE JUICE 2 Pints for . . 35¢







**PLAINTIFF'S EXHIBIT NO. 251.**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

The Shredded Wheat Company,  
Complainant

v.

Kellogg Company, Kellogg Sales Com-  
pany, Will K. Kellogg, The Mer-  
chants Provision Company, William  
R. Bailey, The Dietter & Crowe In-  
corporated, Frederick W. Dietter and  
John A. Crowe

In Equity

No. 922

**Stipulation and Order of Dismissal**

The Court consenting thereto, it is hereby agreed and stipulated among the several parties hereto that this suit may be and hereby is ORDERED DISMISSED without prejudice, and with the condition that should Plaintiff, or its successors, sue again upon the same cause of action, or bring any other litigation involving the same, or related subject matter against these defendants, or any of them, or their successors, representatives, agents, or privies, in this or in any other Court or before the Patent Office, then any party to such litigation may avail himself or itself of any part of or all of the proceedings, orders, testimony, and depositions heretofore had, entered, or taken in this case, or for use herein, to the same extent and for the same purposes as though the same had been taken, had or done in such litigation.

The Shredded Wheat Company  
By E. Y. Crossmore  
Vice-President.

Kellogg Company,  
By Lewis Brown  
President.



Kellogg Sales Company,

(Signed) By Will K. Kellogg President.  
" Will K. Kellogg  
Will K. Kellogg

The Merchants Provision Company,

" By John W. Scobie President  
" Wm. R. Bailey, Secy  
William R. Bailey

The Dietter & Crowe Incorporated

" By John A. Crowe President  
" Frederick W. Dietter  
Frederick W. Dietter  
" John A. Crowe  
John A. Crowe

Approved-as to form:

Breed Abbott & Morgan

C. A. Vilas

Bristol & White

Counsel for Plaintiff

Crichton Clarke

Lewis L. Field

Counsel for Defendant

Approved and so ordered this 22 day of September, 1930.

Edwin S. Thomas  
United States District Judge



## UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR CEREAL BISCUIT.

85,186.

Registered Jan. 30, 1912.

Application filed May 8, 1911. Serial No. 86,292.

## STATEMENT.

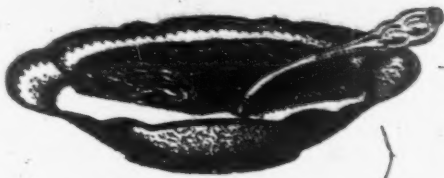
*To all whom it may concern:*

Be it known that THE SHREDDED WHEAT COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of Niagara Falls, county of Niagara, in said State, and doing business at the corner of Buffalo avenue and Fourth street, in the city of Niagara Falls, in said State, has adopted for its use the trade-mark shown in the accompanying drawing, no claim being made to the representation of a shedded-wheat biscuit, for cereal biscuit, in Class No. 46, Foods and ingredients of foods.

The trade-mark has been continuously used in the business of said corporation since September 15, 1909.

The trade-mark is applied or affixed to the packages containing the goods by printing the same on said packages or by placing thereon a printed label on which the trade-mark is shown.

THE SHREDDED WHEAT COMPANY,  
By A. J. PORTER,  
*President.*



## \* DECLARATION.

State of New York Niagara county ss:

ALEXANDER J. PORTER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by

said corporation in commerce among the several States of the United States; that the drawing presented truly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

ALEXANDER J. PORTER.

Subscribed and sworn to before me, a notary public, this first day of November in the year 1910.

[L. S.]

JAS. TRAVERSE,  
*Notary Public.*

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."







Registered Aug. 17, 1926.

Trade-Mark 216,593

## UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

ACT OF FEBRUARY 20, 1905.

Application filed February 18, 1926. Serial No. 237,480.



## STATEMENT.

*To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for BISCUITS, CRACKERS, AND CEREAL FOODS COOKED OR PREPARED FOR CONSUMPTION, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended. The trade-mark has been continuously used and applied to said goods in applicant's business since September 15, 1909. The trade-mark is applied or affixed to the packages containing the goods by printing the same on said packages or by placing thereon a printed label on which

the trade-mark is shown. Applicant is the owner of trade-mark registration No. 85,186, granted January 30, 1912.

Applicant disclaims any exclusive right to the representation of two biscuits apart from the mark shown on the drawing.

The undersigned hereby appoints William H. Davis, Arba B. Marvin, Dean S. Edmonds, Frank E. Barrows, W. Brown Morton, Merton W. Sage, and Willis H. Taylor, Jr., (constituting the firm of Pennie, Davis, Marvin & Edmonds, 165 Broadway, New York city, registration No. 10,939), and each of them, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate of registration, and to transact all business in the Patent Office connected therewith.

THE SHREDDED WHEAT COMPANY,  
By CHAS. H. BROWN, Jr.,  
Treasurer.







Trade-Mark 178,725

Registered Jan. 15, 1924.

## UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

ACT OF MARCH 19, 1900.

Application filed November 14, 1923. Serial No. 192,229.

SHREDDED  
WHEAT

## STATEMENT.

*To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for BISCUIT OR CRACKERS, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1900. The trade-mark has been continuously used and applied to said goods in ap-

plicant's business since January 1st, 1894. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown, or by printing the trade-mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. E. W. Anderson & Son (George Manne Anderson) of Washington, D. C., are appointed attorneys for the prosecution of this application.

THE SHREDDED WHEAT COMPANY,  
By F. L. MOHIN,  
Secretary.







Trade-Mark 213,456

Registered May 25, 1926.

## UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

ACT OF MARCH 19, 1920.

Application filed February 18, 1926. Serial No. 227,479.

# SHREDDED WHEAT

## STATEMENT.

*To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for BISCUITS, CRACKERS, AND CEREAL FOODS COOKED OR PREPARED FOR CONSUMPTION, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1920. The trade-mark has been continuously used and applied to said goods in applicant's business since January 1, 1894. The trade-mark is applied or affixed to the goods or to the packages containing the same by placing thereon a printed label on which the trade-mark is shown or by printing the trade-

mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. Applicant is the owner of trade-mark registration No. 178,725, granted January 15, 1924.

The undersigned hereby appoints William H. Davis, Arba B. Marvin, Dean S. Edmonds, Frank E. Barrows, W. Brown Morton, Merton W. Sage, and Willis H. Taylor, Jr., (constituting the firm of Pennie, Davis, Marvin & Edmonds, 165 Broadway, New York city, registration No. 10,839), and each of them, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate of registration, and to transact all business in the Patent Office connected therewith.

THE SHREDDED WHEAT COMPANY,  
By CHAS. H. BROWN, Jr.,  
Treasurer.







**DEFENDANT'S EXHIBIT NO. 9.**

**THE SHREDDED WHEAT COMPANY**  
NIAGARA FALLS, N. Y.

August 16, 1927

TRUMAN A. DEWEESE  
Vice-President in Charge of Publicity

The News Editor,  
"State Journal,"  
Springfield, Ill.

Dear Friend:

I am sure you will agree that the enclosed item, referring to our suit against the Kellogg Company, has enough news interest to justify its publication in your paper. The item will no doubt come to you through the regular news channels, but as it vitally concerns the interests of this Company that has been a consistent advertiser in the newspapers for thirty years I am sure you will appreciate our efforts to give you the exact facts.

I know you will not want to show any prejudice in the matter, and yet I am sure you will want to be fair to this Company. For this reason I have confined the news article to the claims made in the complaint which was filed in the United States District Court. The matter of editorial comment is left entirely to your good judgment.

We would like to have it printed just as it is written, but of course you are at liberty to make any condensations that will better adapt it to your columns and your policies. We are sure we can depend on you not to print it before the date on which it is to be released. Needless to tell you any courtesies you may



show us in this matter will be greatly appreciated by our Company as well as by the writer.

Very truly yours,

T. A. DEWESE

Vice-President in Charge  
of Publicity.

TAD-M.

---

**DEFENDANT'S EXHIBIT NO. 10.**

Please do not Publish before August 22nd.

**THE SHREDDED WHEAT COMPANY SUES  
KELLOGG**

The Company Asks the Court to Restrain Kellogg from Manufacturing an Imitation of Its Product and from Appropriating its Trade Name and Good-Will.

A lawsuit involving issues of far-reaching importance to manufacturers of food products was started when The Shredded Wheat Company filed a complaint against the Kellogg Company of Battle Creek, Michigan, and certain grocers, alleging unfair competition and unlawful appropriation of its trade name and its good-will. The suit was filed in the United States District Court at New Haven, Connecticut, on Monday, August 22nd.

The occasion for the complaint is the attempt of the Kellogg Company and some grocery jobbers and retailers to market a biscuit which is an imitation of the product of The Shredded Wheat Company under the name "Shredded Whole Wheat Biscuit." The filing of this complaint by The Shredded Wheat Company is notice of its intention to enforce its rights and claims for damages against any manufacturer, wholesaler or retailer manufacturing or distributing any product that is an imitation of its product.



The complaint covers in detail the growth and development of the business of The Shredded Wheat Company, the various methods employed to educate the public regarding the food value of the product and the money expended in creating consumer demand and building good-will all over the world. It places the value of this good-will and trade name at millions of dollars and asks for an injunction against the Kellogg Company.

The complaint alleges that for 34 years The Shredded Wheat Company has given its biscuit a distinctive form, size and shape, and by extensive advertising has so fixed this form, size and shape in the public mind that even when the biscuits are displayed separate and apart from the carton they are recognized by consumers as a product only of The Shredded Wheat Company. They have employed the words "Shredded Whole Wheat Biscuit" and "Shredded Wheat" not as descriptive of the process of manufacture, but as fanciful and distinctive designations identifying their particular product and indicating the source of manufacture.

The complaint avers that The Shredded Wheat Company has expended over \$24,000,000, in all kinds of educational work until these terms or words have grown to be trade names of their product with only one meaning in the public mind in the United States and foreign countries, and that these names have not been used in respect to any other article of food for human consumption.

• Among the educational methods mentioned in the complaint are advertisements in newspapers and magazines; booklets, leaflets, lectures, store cards, and the distribution of millions of samples from house to house. It is also stated that an average of 100,000 persons have passed through the home plant in Niagara Falls every year for twenty years, to the end



that consumers now invariably associate the names "Shredded Wheat Biscuit" and "Shredded Wheat" with the one product made by The Shredded Wheat Company.

While much of the complaint stresses the unfairness of this sort of competition and the damage done to The Shredded Wheat Company through the appropriation of their trade name and good-will, a large portion of the complaint is devoted to calling the attention of the Court to the deception and fraud that will be practiced upon consumers who purchase the Kellogg Biscuit under the impression that they are getting the original Shredded Wheat Biscuit made by The Shredded Wheat Company, the only product associated with the words "Shredded Wheat."

Attention is also called to the fact that the consumer seldom sees the carton or container, hence he is easily led to believe that The Shredded Wheat Company is manufacturing a biscuit reduced in size and containing less wheat. The complaint alleges in fact that in many instances the Kellogg biscuit has been passed off as the Shredded Wheat Company's product.

The complaint recites the fact that in 1915 The Shredded Wheat Company brought a suit in equity against the Ross Food Company and certain grocers to restrain them from manufacturing and marketing an imitation Shredded Wheat. An injunction was issued restraining the defendants from making Shredded Wheat Biscuit, and this injunction afterwards was affirmed with some modification by the Court of Appeals.

It is further alleged in the complaint that the Kellogg package contains nine ounces of food as against the twelve ounces in the Shredded Wheat Company's package and is sold at less price as an additional means of deceiving the consumer who asks for Shredded



Wheat and is given less weight under the impression that he is getting the real Shredded Wheat made by The Shredded Wheat Company. It is further claimed that if Kellogg is not restrained he will proceed to flood the market with imitation biscuit, relying upon the market for Shredded Wheat Biscuit created through years of advertising.

The complaint asks that Kellogg be restrained from infringing upon the rights of The Shredded Wheat Company, from manufacturing an imitation of their product, and from putting on their carton improper and misleading terms, thereby, confusing the product of the Kellogg Company with the real Shredded Wheat Biscuit. The Shredded Wheat Company asks for damages to be assessed and an injunction issued.



## DEFENDANT'S EXHIBIT NO. 79.

N-933

NEW YORK STATE

WOMAN'S RELIEF CORPS HOME

L. J. HUTCHISON, *Superintendent*

Oxford, N. Y., March 17 1933

Kellogg Sales Company

317 Union Bldg., Syracuse, N. Y.

## REQUEST FOR QUOTATIONS

Dear Sir:

Please quote promptly on this sheet by March 30 net prices upon any or all of the following items. Prices to stand good for the month of APRIL-JUNE. Prices should be in conformity with unit of measure. This is not to be considered as an order. Retain one copy. Vouchers submitted in payment of any items purchased will require execution before a Notary Public.

Very truly,

L. J. HUTCHISON,

*Superintendent*

Bids cannot be accepted unless size, kind, brand, and (if possible) manufacturer of each article is specified.

Check Mark	Article	Brand	Substitute Brand	Quantity	Unit of Measure	Price Each Oxford, N. Per Unit of Measure
	Cornflakes		Kellogg's	80	Lbs	\$ .07 Lb
	Shredded Wheat		Kellogg's	10—	Doz	1.01 Doz
	Whole Wheat Biscuit					
	24—12½ Oz Pkgs to the Case					
	15 Biscuit in Pkg					

Signed .....

193

Purchases of the State are exempt from Federal Excise Taxes therefore such charges are not applicable and will be disallowed if charged.



**DEFENDANT'S EXHIBIT NO. 95.****NATIONAL BISCUIT COMPANY****"UNEEBA BAKERS"**

Eighty-Five Ninth Avenue, New York

December 1, 1930.

**To JOBBERS:**

Effective January 1, 1931, National Biscuit Company will inaugurate direct sale and distribution of **SHREDDED WHEAT** to retail merchants and other distributors through its agencies located throughout the United States.

The following prices will apply:

<b>SHREDDED WHEAT</b> , 36's (9 bundles of 4 cartons)	\$4.05 per case
<b>SHREDDED WHEAT</b> (bundles of 4 car- tons)	.45¢ " bundle
<b>INDIVIDUAL SHREDDED WHEAT</b> (72 cartons)	1.60 " case
<b>TRISCUIT</b> (bundles of 6 cartons)	.50¢ " bundle

Inasmuch as **SHREDDED WHEAT** will be considered as an added line to our present merchandise sold through agencies, it will be subject to our usual terms and discounts, as follows:

Less than \$100 per month,	10%
\$100 to \$999.99 per month,	15%
More than \$1,000 per month,	17½%

Jobbers of **SHREDDED WHEAT** will be allowed an additional 2½%, based on quantities noted above, with maximum of 17½% trade discount. Cash discount of 1% will be allowed if paid within 10 days from date of invoice. It is requested that, in the sale of **SHREDDED WHEAT**, Jobbers do not allow in excess of our published discounts.



National Biscuit Company desires to retain, and will co-operate to encourage the sale of SHREDDED WHEAT through jobbers who are in a position to handle same profitably. Any inquiry in regard to this revised policy will have our prompt attention. If jobbers now handling SHREDDED WHEAT desire to discontinue the item entirely, they will be relieved of their stock, at cost price, as early as practicable after January 1, 1931.

If, during the month of December, present jobbers permit their supply of SHREDDED WHEAT to become exhausted and they do not desire to restock, National Biscuit Company reserves the right to fulfill customers' requirements by delivery through its agencies.

Very truly yours,

NATIONAL BISCUIT COMPANY,  
SALES DEPARTMENT,  
F. K. Montgomery, Vice President.



DEFENDANT'S EXHIBIT NO. 102.

**THE DENVER REPUBLICAN:**  
**SUNDAY MORNING, MARCH 11, 1894.**

**Ceres Greets You With**  
**Words of Good Cheer.**



Ceres, the Goddess of Agriculture, says there is wealth of muscle and blood and brain, and the material for the reconstruction of your physical form and the enjoyment of perfect health to be found **ONLY** in pure, unadulterated, plain, nutritious food, and this Nature has lavishly provided.

If you would have bright eyes, rosy cheeks, good form, elasticity in step, avoid adulterated and mixed up messes. Improper food, and, therefore, improper nourishment, has caused the death of more than one-half the entire population of the world under the age of five years, and the other half to suffer the torments of the damned. Drunkards, lunatics, felons and other unfortunates fill the asylums, poor houses, hospitals and penitentiaries of the land because of improper food. The races are sick.

Absolutely pure food is manufactured only by **THE CEREAL FOOD CO.**, 1632 Arapahoe street.

Shredded Whole Wheat Bread and Shredded Cereal Coffee fill every requirement of the human system. Come to the **CEREAL RESTAURANT AND SALESROOM** and try, and take home with you some of these perfect foods.







**DEFENDANT'S EXHIBIT NO. 121.**

UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT.

THE SHREDDED WHEAT COMPANY,  
Complainant-Appellee,  
—against—

THE HUMPHREY CORNELL COMPANY and  
FREDERICK H. TOWNE,  
Defendants-Appellants.

Before:

WARD and HOUGH, Circuit Judges  
and

LEARNED HAND, District Judge.

Appeal by the defendants from a decree of the District Court for Connecticut enjoining them from selling any shredded wheat biscuit without distinctly marking upon each biscuit that it was made by the defendant and was not the product of the plaintiff and from using any cartons having a picture of such biscuit without similar marking. The jurisdiction of the District Court depended upon diverse citizenship.

The plaintiff is a large corporation situated in Niagara Falls, New York, and engaged in the manufacture of the familiar article of food, known as "Shredded Wheat Biscuit", under a series of patents of which the original and basic is for a product and process. This patent was granted to one, Perky, the original promoter of the enterprise, in October, 1895, Number 548,086, and disclosed a process of boiling the original whole wheat berry, partially drying it, and



then forcing it between compression rollers, one or both of which had peripheral grooves which mashed the several parts of the berry into a heterogeneous soft paste. This paste was then forced out through combs or scrapers so as to emerge in thin filaments or shreds. The patent states that the wheat in this form is ready for food, though it may be baked in various ways.

In the actual manufacture of the biscuit, the pulpy shreds or filaments which proceed from the combs, as described in the product patent, are carried off upon a web or endless belt and are built up by a succession of layers until a strand of the desired thickness is secured. This strand is cut at given intervals by knives, thus making the longer edges of the biscuit, which through the pressure of the knives are matted and pressed together. The biscuits are then cooked in an oven which raises the top except at the longer edges which have been matted together, separating the shreds and making more obvious the interstitial texture of the whole. The baking also browns the top, and hardens the biscuit by drying; the color depends upon the manipulation of the heat and somewhat varies with the operation.

In September of the same year Perky took out a design patent for fourteen years upon a biscuit, shown in accompanying drawings and rectangular in plan view, the longer axis being about twice the shorter. The end view or section on the shorter axis was ovoid, the bottom or base of the biscuit being flatter than the top. The design also displayed the rough or filamented texture of the biscuit. It described as the leading feature of the design "a fibrous interstitial appearance, showing superimposed layers or irregular interlacing threads or filaments" in such wise that the threads are visible from the surface through the outer



layers. This design resulted necessarily from the actual process of manufacture above described.

The plaintiff's predecessor, the Cereal Machine Company, of Colorado, began the manufacture of this product in 1895, and in six years, 1901, it had already attained a wide sale, and has increased enormously until at the present time the sales amount to hundreds of millions of biscuits each year distributed in all states of the Union, in Europe, and elsewhere. Accompanying the increase of its business has been an outlay for advertising of many millions of dollars and in all sorts of forms, among which one of the most common has been pictures of the biscuit, either in black and white or in color.

The plaintiff packs the biscuit in cardboard cartons twelve to the box, and sells to the retailer or jobber in cases of thirty-six cartons for Three dollars and sixty cents each. The cartons have the words "Shredded Wheat Biscuit" upon them and the name of the plaintiff as manufacturer. In cases where the retailer sells to the consumer for family use the cartons go along with the biscuits, but a large part of the plaintiff's business consists in sales to hotels, restaurants, lunch-rooms and boarding houses, and the biscuits in such cases necessarily reach the ultimate consumer upon plates or saucers without any identifying mark. As a method of advertising, moreover, the biscuits are displayed in restaurants and lunch-rooms in large glass globes, without any mark or sign of their source.

The plaintiff, to show the unfair competition upon which the bill was based, was obliged to prove that the mere appearance of the biscuits when out of the cartons was so associated with the plaintiff that it had acquired a "secondary" meaning. To do this it called many witnesses, who swore either that they knew the biscuit as the plaintiff's or that they knew it as



coming from a single source to which they had become accustomed. These witnesses were jobbers, retailers and consumers. The testimony was uncontradicted and the defendants do not dispute that the biscuit is so associated with the plaintiff or at least with some single source in the public mind.

The defendant company is only a jobber selling the biscuits of the real party in interest, the Ross Food Company, a corporation organized in 1914, by Ross, Valentine and Towne, formerly employees of the plaintiff for many years. The design patent having expired in 1909, and the product patent in 1912, these gentlemen conceived the project of manufacturing a biscuit identical in substance and appearance with the plaintiff's, and this they began to do in August, 1915. Their efforts had not as yet achieved much success when in October of that year, three years after the product patent had expired, this bill was filed.

The Ross Food Company markets its biscuits in cartons of ten each, of which it sells thirty-six to a case for two dollars and eighty cents. The carton is so totally dissimilar to that of the plaintiff that nothing need be said of it except that it contains a picture of two of the wheat biscuits, accurate not only as to its own contents, but necessarily identical with the plaintiff's biscuit. This picture has been used by retailers in the sale of the goods as an assurance that the contents of the carton was shredded wheat biscuit and the general appearance of the carton in one instance anyway was not sufficient to prevent confusion. The plaintiff also produced several witnesses who said either that they had innocently served the Ross Food Company's biscuit as shredded wheat or that they had received them as such.

The question litigated upon the trial was whether, assuming that the general appearance of the plaintiff's biscuit had acquired a "secondary" meaning, that



justified any relief in view of the design patent, and the defendant's undoubted right to make and sell the biscuits as it chose. Proof was taken as to the feasibility of wrapping each biscuit or tagging it with a distinctive mark, and as to the commercial possibility of making the biscuit in another form or of impressing some mark upon its top in the process of baking. So far as necessary this proof is considered in the opinion.

CHARLES K. OFFIELD and WILLIAM C. BREED  
for the plaintiff

JAMES H. GRIFFIN and JOHN R. NOLAN  
for the defendant.

LEARNED HAND, D. J.: Originally the plaintiff was able to sell its biscuits because the public came to like them; they liked their taste, they liked their appearance, they were converted by their supposititious dietetic value. The art of advertising spuriously reinforced a genuine demand by the power of reiterated suggestion. So far, however, the public was buying because it wanted, or had been made to think it wanted, the biscuit which the plaintiff produced and so far there was no ground for any kind of protection. We have recently considered this question in *Crescent Tool Co. v. Kilborn & Bishop Co.*, decided Nov. 13, 1917, and there we held that the right to appeal to the public even in the minutest details of the plaintiff's design was open to all so long as the details had acquired no "secondary" meaning. The evidence shows without contradiction, however, that the long monopoly of the plaintiff has created, as indeed it was bound to create, a state of mind more complex than this, for when one has for a long time bought from a single source some article that one likes, either through conscious reflection or through mere conservative habit,



one is apt to impute to its source a part of its patent value. The plaintiff has at least shown that the public has become accustomed to regard its familiar wafer biscuit as emanating if not from it by name, at least from a single, though anonymous maker, and the second is as good for these purposes as the first, *Sealfield Co. vs. G. & C. Merriam Co.*, 238 Fed. R. 1, 8. Though the public may, therefore, buy the biscuit because it has come to like it, the plaintiff still has a stake in that other motive for buying, i. e., that it comes from the accustomed maker. It is true that it has at times been said that where the association of the maker's name with the article has arisen during the monopoly of a patent, it is of slight value, *Kellogg Toasted Corn Flake Co. vs. Quaker Oats Co.*, 235 Fed. R. 657, 658. But while the public cannot of course exercise any preference between makers during the monopoly, they may come, and as we have said, it is almost inevitable that they should come, to associate some of the supposed merit of a successful article not only with the advantages due to the patented characteristics, but with the supposed uniformity and reliability of its manufacture. If the public has come so to associate the machine with a single maker, he is, we think, entitled to some protection, as much when the association be through mere appearances as when it be wrapped up in a name as in *Singer Manufacturing Co. vs. June Mfg. Co.*, 163 U. S. 169. It is not necessary that there should be a period after the expiration of the monopoly during which the field was open and the secondary meaning was acquired or preserved among actual or possible competitors, though the contrary is indeed suggested in *G. & C. Merriam v. Sealfield*, 198 Fed. R. 369, 374.

We think, therefore, that prima facie the plaintiff stands with a genuine grievance, an "injuria" of ex-



exactly the same kind as the owner of a trade-mark or a well-established "make-up". The difficulty in the case at bar, as it generally does in such cases, lies in giving any remedy which shall not take away the defendant's undoubted rights. The original "secondary meaning" cases like *Reddaway vs. Banham*, (1896), App. C. 199, all turned upon some meaning acquired by words of common speech, to which it cost the defendant little or nothing to add some affix, so that his complaint that he was being deprived of rights in the public domain was thin, yet in strict principle he was correct, because prima facie he might use the common speech in any context. The courts were necessarily in fact compromising between two conflicting rights, of which one had no substantial value.

It is in cases where the connotation of origin arises not from verbal description, but only from the appearance of the article, that the trouble arises in application, because the appearance must in some way be changed, or the article must be wrapped or marked. Thus has arisen the principle often applies in this court that minor, or "non-functional", changes in appearance may be required, so long as the substantial elements are left in the public domain, *Enterprise Mfg. Co. vs. Landers*, 131 Fed. R. 240, *Yale & Towne Mfg. Co. v. Alder*, 154 Fed. R. 37. In the same class stand cases like *Fox vs. Hathaway*, 199 Mass. 99, and *Fox vs. Glynn*, 199 Mass. 344, *Coca Cola Co. vs. Gay Ola Co.*, 200 Fed. R. 720, *Walker vs. Grubman*, 222 Fed. R. 478. Indeed, this principle has been pressed very far in this court, *Rushmore vs. Manhattan Screw & Stamping Co.*, 163 Fed. R. 939, *Lovell, McConnell Mfg. Co. v. American Ever Ready Co.*, 195 Fed. R. 931, *Rushmore vs. Badger Brass Mfg.* 198 Fed. R. 379. The first *Rushmore* case was recognized at the time as trenching hard upon the other limit in application, which is that where the "second-



any meaning" is bound up in elements of the appearance which cannot be changed without cutting off the defendant's substantial right to make and sell that kind of goods in question, the plaintiff must suffer the resulting confusion. These are the converse of the "non-functional" cases, *Daniel vs. Electric Hose & Rubber Co.*, 231 Fed. R. 827, *Marvel Co. vs. Pearl*, 133 Fed. R. 160, *Diamond Expansion Bolt Co. vs. U. S. Expansion Bolt Co.*, 177 App. Div. 554, *Fairbanks vs. Jacobus*, 1 Blatchf. 337, *Heide vs. Wallace*, 135 Fed. R. 346, *Globe Wernicke Co. vs. Fred Macey Co.*, 119 Fed. R. 68, *Flagg Mfg. Co. v. Holway*, 178 Mass. 83. Under the guise of protecting against unfair competition we must be jealous not to create perpetual monopolies.

We do not see any possible change in the appearance of the biscuit itself which would be of enough service to the plaintiff to justify its imposition upon the defendant. Concededly, variation could be enforced only in its form, color or size. As to form, the plaintiff appears to us finally concluded by its own design patent. Whether or not the evidence might have allowed us to prescribe some variation in the form had that form been only the result of the plaintiff's original adoption, we do not say; *Fox vs. Hathaway*, *supra*, suggests that we might have found a way out. But the plaintiff's formal dedication of the design is conclusive reason against any injunction based upon the exclusive right to that form, however necessary the plaintiff may find it for its protection. As to color also we feel ourselves limited, because, while the shade of brown depends upon the baking, the plaintiff's own biscuits vary within appreciable limits and to require the defendant to adopt a shade different enough for commercial distinction would be to force them to bake their biscuits so that they would be repellant to most tastes. It would, in so far as we can see, in effect, either ter-



inate or hopelessly cripple any competition between the two parties."

With size it is perhaps different, for we are not satisfied that the added cost of turning out a smaller biscuit would be substantial, per pound of shredded wheat. That might indeed have to await experiment, but it appeared that a mere change in size would give any effective relief to the plaintiff. There is no reason to suppose that it would, and there is every reason to believe that it would greatly embarrass the defendants. To increase the size of the biscuit would make it impossible to put two in the ordinary saucer; to decrease it so that three could be sold for the present price of two would obviously increase the cost of that part of the manufacture, after the wheat is shredded, by one-half again, or nearly. We think that such a requirement is fanciful as relief and too onerous upon the defendant.

There remains, therefore, as the only practicable relief, some mark impressed upon the surface of the biscuit in the baking, or some proper wrapping or tag, with an adequate legend. In the imposition of such a requirement, we should observe the same limitation as courts have by general agreement observed in the "non-functional" cases. That is, we should be equally jealous to assure the defendant's right freely to compete in the market with the first comer. The question is always commercial; we ought not to impose any burdens which either by changing the appearance of the article itself, or by imposing expense upon its production, will operate to give the plaintiff such advantage in the market as will substantially handicap his competitors. On the other hand Judge Hough believes that once the right is assured to the defendant of making the article in all its substantial elements, that is all he can demand. If the similarity between the goods must remain such as to create confusion, it is irrelevant



that the cost of wrapping, marking or tagging them may impose too great a burden upon the defendant to allow his continuing in the market. His manufacture as it exists, is a fraud and all elements of deception must be removed before it can be permitted to continue.

In the case at bar it remains ambiguous upon the record just what are the commercial possibilities of marking, wrapping or tagging the defendant's individual biscuits. The evidence is meagre as to impressing a mark upon the top of the biscuits during the baking; all we can find is that of Valentine. At one place he says that it would be practicable to impress a cross upon the biscuit while soft that would endure and the cost would be slight; later he says that when the biscuit rose in the baking the mark would disappear or the biscuit would be "deformed". We think that the "deformity" is just what the plaintiff is entitled to require, not a deformity, it is true, which would affect the design dedicated by the design patent, but enough to mark distinctively the biscuit itself. After a careful scrutiny of this record as it stands we see no reason to suppose that such a requirement is not possible.

The evidence as to wrapping or tagging each biscuit is if possible still more meagre. Ross swears that the paper alone for wrapping would cost twenty-five cents per case, raising the cost from two dollars and eighty cents to three dollars and five cents. How far the cost of labor and breakage would increase this, he does not know. A paper tag or band if put on before baking would be destroyed, and if put on afterwards must be pasted. What the cost of pasting would be, does not appear, nor whether a paste could be obtained which would be unobjectionable upon an article of food. It would certainly appear as though each of these would be a reasonable possibility.

The record appears neutral in respect of these matters, and in the view I take personally all depends upon



whose is the burden to show that there is or is not a commercially practicable means to discriminate. I think that since the plaintiff has shown that the appearance of its biscuit has acquired a "secondary" meaning and that it is physically possible to attach or impress upon the defendant's biscuit a distinguishing mark, the defendant has the burden of showing that such a mark will impose upon him a commercial handicap which will practically take from him his free right to compete. I therefore agree with Judge Hough that the defendant should be compelled to put some distinguishing mark upon each biscuit sold to any final purchaser out of the carton. This mark need not be what the District Court required, that is, a statement that the biscuit was made by the defendant, and not by the plaintiff, but something sufficiently obvious to distinguish the two, as a cross, a line, or a letter, if the mark be impressed, or a suitable legend, if paper be fastened to the biscuit.

Such a requirement does not, however, apply to those biscuits which reach the final purchaser in cartons, that is, to those which are not sold to hotels, restaurants, lunch-rooms and boarding houses. The defendant's cartons are so different from the plaintiff's that no confusion is possible. Yet as the point has been so much pressed that the picture of the biscuits on the cartons has been the means of confusion or of deception, we agree that out of abundant caution the defendant should add below that picture in large type the legend, "Made by the Ross Food Company."

I think that as respects the marking, wrapping or tagging of individual biscuits the case is such that only commercial experience can finally tell what are the possibilities. I would therefore add to the requirements imposed above a probationary period within which the defendant must try in good faith to accommodate itself to this necessity. This portion of its trade is less than ten per cent. and it cannot prove a for-



midable obstacle for six months to require it to comply provided that at the end of that time it have leave to demonstrate that compliance is equivalent to destruction of its right of free competition. The burden will be upon it to show that it has exhausted all the possibilities of effective distinction between the biscuits, and that each involves an expense which will not permit it to maintain that part of its trade without a handicap that forbids any assurance of a reasonable profit and a continued competition in that line. While Judge Hough does not think that such a probationary period is necessary, since the result would be irrelevant, he agrees to a disposal of the case upon those terms.

H. G. W.

The decree will, therefore, be modified as follows: first, by relieving the defendants of any injunction in the sale of such biscuits as shall reach the last purchaser in cartons, except that at the base of the picture of biscuits on the carton shall appear the legend "Made by Ross Food Co." Second, all biscuits reaching the last purchaser outside of their cartons must either bear a letter, cross or other plain symbol, impressed in their substance, or have fastened upon them a wrapping, tag or band, stating that they are made by the Ross Food Company. Third, the defendant at the end of six months may apply to the District Court to be relieved of the second requirement upon showing that after a bona fide trial of all possible expedients it cannot comply with the second provision except at an expense which would make impossible any continued competition in the business of selling biscuits outside the cartons with any assurance of reasonable profit.

As so modified the decree is affirmed without costs.

A true copy,

WM. PARKIN,  
(Seal) Clerk



**DEFENDANT'S EXHIBIT NO. 122**

UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE SECOND CIRCUIT.

No. 145, October Term 1917.

THE SHREDDED WHEAT COM-  
PANY,  
Complainant-Appellee,  
against  
THE HUMPHREY CORNELL  
COMPANY and FREDERICK  
H. TOWNE,  
Defendants-Appellants.

Appeal from the Dis-  
trict Court of the  
United States for  
the District of Con-  
necticut.

**PETITION OF DEFENDANTS-APPELLANTS FOR RE-HEARING.**

To the Honorable the Judges of the United States Cir-  
cuit Court of Appeals for the Second Circuit:

Your petitioners, The Humphrey Cornell Com-  
pany and Frederick H. Towne, defendants-appellants,  
in the above-entitled cause, respectfully show:

(1) That as appears from the majority opinion  
(per Judges Hough and Hand) filed February 20, 1918,  
the fact was apparently overlooked by the Court that  
defendants' cartons bear thereon, in large distinct type,  
below each picture of the biscuit, the legend:

Manufactured by  
THE ROSS FOOD Co., Inc.,  
Batavia, N. Y., U. S. A.; and

(2) That, therefore, there was inadvertently in-  
cluded in the order of modification of the decree of the  
District Court, respecting the sale of defendants' bis-  
cuits in cartons, the requirement:



... that at the base of the picture of biscuits on the carton shall appear the legend: "Made by Ross Food Co."

The express language of the Court is:

"The decree will, therefore, be modified as follows: first, by relieving the defendants of any injunction in the sale of such biscuits as shall reach the last purchaser in cartons, except that at the base of the picture of biscuits on the carton shall appear the legend: 'Made by Ross Food Co.'"

The portion of the opinion forming the basis of the foregoing requirement as to the addition of the legend "Made by the Ross Food Co." is found at page 12 of the typewritten opinion, and reads:

"The defendant's cartons are so different from the plaintiff's that no confusion is possible. Yet as the point has been so much pressed that the picture of the biscuits on the cartons has been the means of confusion or of deception, we agree that out of abundant caution the defendant should add below that picture in large type the legend, 'Made by the Ross Food Company.'"

The effect of leaving in the opinion and order of the Court, the requirement that the defendants' cartons shall bear the legend "Made by the Ross Food Co.," is to convey the erroneous impression that defendants' cartons did not heretofore have upon them words designating the biscuits illustrated thereon and contained therein as a product manufactured by The Ross Food Co.; and it leaves the meaning of the Mandate in doubt before the District Court, and may thus occasion difficulty in the settlement of the decree in that Court, with attendant delay and expense. Moreover should the District Court insist upon defendants altering the language on their cartons, i. e., changing



"Manufactured" to Made, the defendants will be greatly embarrassed thereby, in that there are many thousands of the cartons on hand.

WHEREFORE your petitioners pray that a rehearing of this cause may be granted on the matters hereinbefore referred to at such time as the Court may appoint, that the Court may then consider and determine the propriety of modifying the said opinion and the directions therein relative to the marking of defendants' cartons, and that such other and further relief may be had as to this Court may seem just and meet and the circumstances of the case may require.

The Humphrey Cornell Company  
Frederick H. Towne  
Defendants-Appellants  
and Petitioners.

By John R. Nolan  
James H. Griffin  
Their Attorneys and  
Counsel.

Dated March 5, 1918.



STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

I, John R. Nolan, of counsel for The Humphrey Cornell Company and Frederick H. Towne, the petitioners above named, do hereby certify on oath, that in my opinion the grounds stated in the foregoing petition for rehearing are meritorious and sufficient, and that said petition is well founded in point of law; and further that the said petition is made in good faith and not for the purpose of delay.

John R. Nolan

Sworn to and subscribed before me this fifth day of March, 1918.

B. Chandler Snead.

(Notary's seal) Notary Public, Kings County.  
Certificate Filed New York County.

Endorsed.—

UNITED STATES CIRCUIT COURT OF APPEALS  
SECOND CIRCUIT.

Filed March 7, 1918.

WILLIAM PARKIN, Clerk.

A true copy,

(Sgd.) W.M. PARKIN,

(Seal) Clerk.



**DEFENDANT'S EXHIBIT NO. 126.**

UNITED STATES OF AMERICA, ss:

The President of the United States of America,

To the Honorable the Judges of the District Court of  
the United States for the District of Connecticut.

GREETING:

WHEREAS, lately in the District Court of the United States for the District of Connecticut, before you, or some of you, in a cause between Shredded Wheat Company and Humphrey Cornell Company and another, a decree was entered in the office of the clerk of said court on the 25th day of May, 1917, in the words and figures following, to-wit:—

“This cause having duly come on to be heard upon the issues raised by the pleadings herein and Charles K. Offield, Esq., William C. Breed, Esq., and Frederick I. Allen, Esq., having been heard in behalf of complainant; and John R. Nolan, Esq., James H. Griffin, Esq., David Tice, Esq., and Arthur Keefe, Esq., having been heard in behalf of defendants and due consideration having been had, it is now upon motion of George D. Seymour, solicitor for complainant,

Ordered, adjudged and decreed

I. That complainant or its predecessors have for upwards of twenty three years past been engaged in the manufacture and sale of a whole wheat biscuit of a particular form shape size and color; and during all said period until the acts of these defendants have been the sole manufacturer of a whole wheat biscuit of such form shape size color and character,



II. That the said biscuit as manufactured and sold by complainant in such form shape size and color has become widely and universally known as the product of complainant and known to the public under the name of Shredded Wheat or Shredded Wheat Biscuit, which said words were originally applied to said product by complainant.

III. That the said form shape size color of said biscuit have come through long and exclusive use and advertisement to have the meaning and significance only of the product and biscuit of the complainant and are not functional or essential to the manufacture of a whole wheat biscuit.

IV. That the defendants have infringed upon and violated the rights of complainant in selling a whole wheat biscuit manufactured by The Borden Food Company simulating, copying and imitating the form shape size and color of the complainant's biscuit, and have unfairly traded therein by the marketing and sale of the said biscuit to the injury of the complainant and the deception of the public.

V. That the defendants have further infringed upon and violated the rights of the complainant by placing upon their cartons a pictorial representation of complainant's biscuit to the injury of complainant and the deception of the public.

VI. That the Ross Food Company the manufacturer of said biscuit has assumed the expense of defending this action; and that the said corporation and Andrew Ross president thereof, and Ralph Valentine Superintendent thereof were present and participated in the trial of the issues herein in behalf of defendants and are privies to the judgment of this court.

VII. That an injunction issue in accordance with the opinion of this court filed herein, and under the seal of this court restraining and enjoining the defendants The Humphrey Cornell Company and Frederick H. Towne, their privies agents



servants employees attorneys and representatives from manufacturing selling or marketing a whole wheat biscuit of the same form shape size color and appearance as that of complainant's biscuit or in imitation thereof unless there is clearly and unmistakably marked on each biscuit words stating that such biscuit is made by the defendants or other manufacturer and is not the product of the Shredded Wheat Company, the complainant herein; and that defendants their privies, agents, servants, employees, attorneys and representatives are further enjoined and restrained from selling or marketing or using cartons or containers for a wheat biscuit bearing thereon a pictorial representation of the shredded wheat biscuit manufactured by the complainant or in imitation thereof, unless there is clearly and unmistakably on each representation of such biscuit words stating that said biscuit is made by the defendants or other manufacturer and is not the product of the Shredded Wheat Company, the complainant herein.

VIII. That the evidence shows that the sales of the defendants The Humphrey Cornell Company and Frederick H. Towne are so small in amount as not to justify the expense of a reference to a master for an accounting, and this decree is therefore made final.

IX. That the complainant is entitled to recover against the defendants the costs and disbursements of this action the same to be taxed by the clerk of this court and execution issue therefor.

Dated New Haven, Connecticut, May 25, 1917.

EDWIN S. THOMAS, U. S. J."

as by the inspection of the transcript of the record of the said Court, which was brought into the United States Circuit Court of Appeals for the Second Circuit, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.



And, Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and seventeen the said cause came on to be heard before the said United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record and was argued by counsel:

On consideration whereof, **IT IS HEREBY**

**ORDERED, ADJUDGED AND DECREED**, That the decree of said District Court be and it hereby is modified in accordance with the opinion of this court and as so modified is affirmed without costs.

You therefore, are hereby commanded that no further proceedings be had in said cause, in accordance with the decision of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 4th day of March, in the year of our Lord one thousand nine hundred and eighteen.

WILLIAM PARKIN

(Seal)

Clerk of the United States Circuit Court  
of Appeals for the Second Circuit.



UNITED STATES OF AMERICA  
DISTRICT OF CONNECTICUT

} ss:

I, C. E. Pickett, Clerk of the United States District Court in and for the District of , do hereby certify that the annexed and foregoing is a true and full copy of the original Mandate filed March 5, 1918 in the case of Shredded Wheat Co. vs Humphrey Cornell Co. and another, No. 1436 Equity now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of  
(Seal) the aforesaid Court at New Haven this 9th day of July, A. D. 1935.

(Sgd.) C. E. PICKETT,  
Clerk.







DEFENDANT'S EXHIBIT NO. 222.

Defendant's Exhibit No. 222

Clerk

# NATIONAL BISCUIT COMPANY

## "Uneda Bakers"

Denver, Colo.,  
June 2nd, 1932.

TO ALL JOBBERS:

We have put out a smaller size Shredded Wheat biscuit in Individual Cartons, for restaurant use, and these are listed at \$1.35 per case of 72, your regular discount applies.

We will continue to carry our regular size biscuit in Individual Cartons at \$1.60 per case of 72.

Our reason for this change has been the fact that there has been a smaller biscuit put out by one of our competitors and some of the restaurant trade have been confused with the thought that our price was out of line.

In ordering out this merchandise please designate "Small Size" for the new carton and "Large Size" for the standard carton. We know, there are a great many restaurants who do not care to change because the consumer in general is used to the larger size biscuits but we want your salesmen to be in line with competition on price, and if this new package is used only when needed it will serve its purpose.

We will see that our salesman shows you samples.

Yours very truly,

NATIONAL BISCUIT COMPANY.

*Bill Race*  
Manager.

*D. M. Cherry*

CKB:R

S.S. SUMMER HEAT - COOLING DRINKS - SLIM JIM BUTTER PRTZELS.







## DEFENDANT'S EXHIBIT NO. 234.

Defendant's Exhibit No. 234DEPARTMENT OF COMMERCE  
UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting.

Clark

THIS IS TO CERTIFY that the annexed is a true copy from the records  
of this office of the File Wrapper and Contents, in the  
matter of the

Trade-Mark

Registered by

The Shredded Wheat Company,

January 15, 1924,

Number 178,725.

IN TESTIMONY WHEREOF I have hereunto set my  
hand and caused the seal of the Patent Office to be  
affixed, at the City of Washington, this twentieth  
day of May, in the year of our Lord one  
thousand nine hundred and thirty-three and of the  
Independence of the United States of America the  
one hundred and fifty-seventh.

ATTEST:

Acting

Chief of Division.

Thomas E. Robertson  
Commissioner of Patents.



188321

417

9

U. S. SERIAL NO. (Date of 1923)

188.329

1923

(OFFICE BOOK)

TRADE-MARK

TRADE-MARK No.

Class 41, Goods and Services

ACT OF MARCH 19, 1920.

188321

Name The Shredded Wheat Company

C

County of Niagara Falls

State of New York

For Biscuit or Crackers

Petition	Oct 31, 1923
Declaration	Nov 14, 1923
Statement	Oct 31, 1923
Specimens	" " 1923
Drawing	" " 1923
Fee \$10	Oct 31, 1923
Appl. filed complete	Nov 14, 1923

Remitted for Publication	R. GISTER, B	1923
Remitted for Registration	E. W. Anderson	Dec 4, 1923
Notice of Allowance	JAN 15 1924	DEC 4 1923
Registered		By Commissioner
Representative		1923

Attorney E. W. Anderson & Son  
100 - 9th St. N. W., City

Associate Attorney

Merchandise Biscuits or crackers.



Serial No. 188,329 Paper No.  
Application

P E T I T I O N .

507

To the Commissioner of Patents:

*a*  
*m*  
*725*  
The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing for biscuit or crackers, in Class 46, Food and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1920. The trade-mark has been continuously used and applied to said goods in applicant's business since January 1st, 1894. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown, or by printing the trade-mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. E.W. Anderson (George Manne Anderson) of Washington, D.C., are appointed attorneys for the prosecution of this application.

The Shredded Wheat Company,

by *L* *by* *W. J. Anderson*

88329-1



Trade-Marks  
 1151823  
 U. S. Pat. Off.

868

## DECLARATION.

State of New York)  
 ) SS:  
 County of Niagara)

Frank I. Morin,....., being duly sworn, deposes and says: that he is the ~~SECRETARY~~..... of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade mark is used by said corporation in commerce among the several states of the United States and between the United States and foreign nations or Indian tribes; that the description and drawing presented truly represent the trade mark sought to be registered; and that the specimens show the trade mark as actually used upon the goods.

Frank I. Morin

Subscribed and sworn to before me, a notary public, this  
 ..... day of ..... 1923.

Notary  
 seal:

Notary Public

188329-2



*Not entered*

DECLARATION.

State of New York }  
County of Niagara ) SS:

*Frank W. Wain*  
....., being duly sworn, deposes  
and says that he is the ..... of the corporation,  
the applicant named in the foregoing Statement; that he believes  
the foregoing statement is true; that he believes said  
corporation is the owner of the trade mark sought to be registered;  
that no other person, firm, corporation or association,  
to the best of his knowledge and belief, has the right to use  
said trade mark in the United States, either in the identical  
form or in any such near resemblance thereto as might be calculated  
to deceive; that said trade mark is used by said corporation  
in commerce among the several States of the United  
States and between the United States and foreign nations or  
Indian tribes; that the description and drawing presented truly  
represent the trade mark sought to be registered; and that the  
specimens show the trade mark as actually used upon the goods.

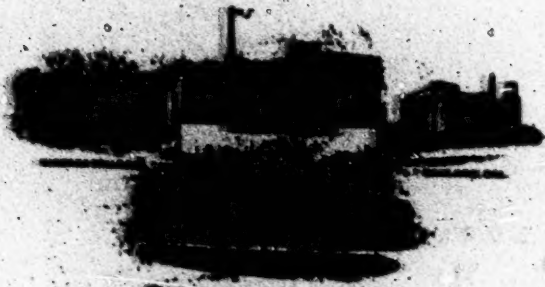
*Frank W. Wain*

Subscribed and sworn to before me, a notary public, this  
..... day of ..... 1923.

*[Signature]*

188329-3



# 1  
Letter to  
Special

THE  
SHREDDED WHEAT COMPANY

NIAGARA FALLS, N.Y.

F. L. Moore,  
TREASURER

October 18th, 1923.

Examiner of Trade Marks,  
United States Patent Office,  
Washington, D. C.

Dear Sir:

It is requested that this  
application be made special for the reason that  
it is to form the basis of foreign registration in  
the following countries:

Cuba  
Brazil  
Poland  
Germany  
Norway

Sweden  
Denmark  
Switzerland  
Portugal  
Spain

Yours very truly,

THE SHREDDED WHEAT COMPANY

Secretary & Treasurer.

17111

188929-4



23-34

Form IX

## DEPARTMENT OF THE INTERIOR

UNITED STATES PATENT OFFICE

WASHINGTON

Sir:-

Receipt is acknowledged of your incomplete application for registration of a trade-mark, the title of which is

filed October 1, 1883, accompanied by

Petition and Statement  
Declaration  
Drawing  
Fee of \$10.00  
Specimens

This application is incomplete because the officer before whom the declaration was made did not affix his official seal thereto. A new declaration is required.

This application should be completed within one year from the above date.

Very respectfully,

Thomas E. Robertson

Commissioner of Patents.

1883 29-5



178

OFFICE OF THE  
COMMISSIONER OF PATENTS  
WASHINGTON D. C.

2-126

KT No. 188,329

DEPARTMENT OF THE INTERIOR  
UNITED STATES PATENT OFFICE  
WASHINGTON

The Shredded Wheat Company

Sir:

Your APPLICATION for REGISTRATION OF TRADE-MARK

For

Biscuits or crackers

has been examined and allowed.

The CERTIFICATE OF REGISTRATION will be issued and forwarded  
to you as soon as practicable in due order of business.

Very respectfully,

Thomas E. Robertson  
Chief Clerk of Patents

E. W. Anderson & Son,  
700 9th St., N. W.,  
Washington, D. C.

188 329-6



Registered Jan. 15, 1924.

179

Trade-Mark 178,725.

## UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

ACT OF MARCH 19, 1900.

Application filed November 14, 1900. Serial No. 100,230.

# SHREDDED WHEAT

### STATEMENT.

*To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for BISCUIT OR CRACKERS, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1900. The trade-mark has been continuously used and applied to said goods in ap-

plicant's business since January 1st, 1894. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown, or by printing the trade-mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. E. W. Anderson & Son (George Manne Anderson) of Washington, D. C., are appointed attorneys for the prosecution of this application.

THE SHREDDED WHEAT COMPANY,  
By F. L. MONIN,  
Secretary.







## DEFENDANT'S EXHIBIT NO. 235.

Defendant's Exhibit No. 235

DEPARTMENT OF COMMERCE  
UNITED STATES PATENT OFFICE*H. E. Mahaffey*

To all persons to whom these presents shall come: Greeting:

Clerk

THIS IS TO CERTIFY that the annexed is a true copy from the records  
of this office of the File Wrapper and Contents, in the  
matter of the

Trade-Mark

Registered by

The Shredded Wheat Company,

May 25, 1926,

Number 213,456.

IN TESTIMONY WHEREOF I have hereunto set my  
hand and caused the seal of the Patent Office to be  
affixed, at the City of Washington, this twentieth  
day of May, in the year of our Lord one  
thousand nine hundred and thirty-three and of the  
Independence of the United States of America the  
one hundred and fifty-seventh.

ATTEST:

Attest

*L. H. Johnston*  
Chief of Division*Thomas E. Robertson*  
Commissioner of Patents



46K

9 1920

RECEIVED FOR REGISTRATION  
227479

TRADE-MARK No.

2248

TRADE MARKS:

49. FOODS AND INGREDIENTS OF

1926

REGISTERED

MAY 25 1920

ACT OF MARCH 19, 1920.

THE SHREDDED WHEAT COMPANY

of NIAGARA FALLS

State of NEW YORK

For BISCUITS, CRACKERS, AND CEREAL FOODS

Parts of Application  
Filed

Petition	1926
Declaration	1926
Statement	1926
Specimens	1926
Drawing	1926
Fee	1926

Application filed complete

F.B.

Examined and Passed for Publication REGISTER-B

Published in The Official Gazette

Examined for Registration

Notice of Allowance

Application for Renewal Filed

Examined for Renewal

Renewed

Representative

Attorney

Associate Attorney

Merchandise Biscuits, crackers and cereal foods  
cooked or prepared for consumption.



PENNIE, DAVIS, MARVIN AND EDMONDS

COUNSELLORS AT LAW

165 BROADWAY

NEW YORK

WASHINGTON OFFICES  
WASHINGTON LOAN & TRUST BLDG

CARLOS PENANGOLD, New York  
WESTERN UNION BLDG

CORSTLAND BURY

February 16, 1926.

WALTER B. DAVIS  
JAMES A. MARVIN  
WALTER E. EDMONDS  
WALTER E. EDMONDS  
WALTER E. EDMONDS  
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WALTER E. EDMONDS

10-P

B2718

Honorable Commissioner of Patents,

Washington, D. C.

Sir:

We are enclosing herewith, for filing, an application by The Shredded Wheat Company for registration of the trade mark "Shredded Wheat" for biscuit, crackers, and cereal foods cooked or prepared for consumption, including one sheet of drawings, five specimens of the mark as actually used upon the goods, and our check for \$10.00 to cover the filing fee.

Very respectfully,

*Pennie, Davis, Marvin & Edmonds*

2204711



10-P  
32718

"Shredded Wheat"

227474

P  
D C  
PETITION AND STATEMENT

TO THE COMMISSIONER OF PATENTS:

THE SHREDDED WHEAT COMPANY, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for biscuits, crackers, and cereal foods cooked or prepared for consumption, in Class 46, foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of March 19, 1920. The trade-mark has been continuously used and applied to said goods in applicant's business since January 1, 1894. The trade-mark is applied or affixed to the goods or to the packages containing the same by placing thereon a printed label on which the trade-mark is shown, or by printing the trade-mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. Applicant is the owner of trade-mark registration No. 178,725, granted January 15, 1924.

The undersigned hereby appoints William H. Davis, Arba B. Marvin, Dean S. Edmonds, Frank E. Barrows, A. Brown Morton, Herton W. Sage, and Willis H. Taylor, Jr., (constituting the firm of Pennie, Davis, Marvin & Edmonds, 165 Broadway, New York City, Registration No. 10,839), and each of them, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation to make alterations and amendments therein, to receive the Certificate of Registration, and to transact all business in the Patent Office connected therewith.

THE SHREDDED WHEAT COMPANY,

By *William H. Davis*  
Treasurer

227479-2



## DECLARATION

STATE OF NEW YORK )  
COUNTY OF NY. ) ss

CHARLES E. BROOK, JR., being duly sworn, deposes and says that he is the Treasurer of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several states of the United States; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

SUBSCRIBED AND SWORN to before me, a Notary Public,  
this 12<sup>th</sup> day of May, 1906.

Notary Public.

227479-3



Trademark Division, Room 104

Address only

"The Commissioner of Patents,  
Washington, D. C."  
and not any official by name

DEPARTMENT OF COMMERCE  
UNITED STATES PATENT OFFICE  
WASHINGTON

Paper No. 1

All communications respecting this  
application should give the serial number  
date of filing, and name of  
the applicant

Please find below a communication from the EXAMINER in  
charge of this application

*Thomas E. Robertson*  
Commissioner of Patents

Pennie, Davis, Marvin & Edmonds,  
185 Broadway,  
New York, N.Y.

Applicant: The Shredded  
Wheat Company,  
Ser. No. 327,479  
Filed Feb. 18, 1926  
For Trade Mark

March 18, 1926

✓ The term "and cereal foods cooked or prepared for con-  
sumption" is indefinite. The particular character of the goods  
covered by this term should be disclosed.

✓ Complete specimens as actually used on each variety of  
applicant's goods should be furnished. Those on file are for  
"Biscuits" only.

OK As presented, registration is refused.

*W. T. McCracken*

(Shredded Wheat)



4-AA  
P-1716

IN THE UNITED STATES PATENT OFFICE

Application of THE SHREDDED WHEAT COMPANY

Serial No. 227,479

Filed February 18, 1916

For Trade Mark SHREDDED WHEAT.

New York, N.Y., April 20, 1926.

Honorable Commissioner of Patents,

Washington, D. C.

S I R:

We beg to submit the following in reply to the comment in the Examiner's letter dated March 18, 1926.

We respectfully request that the objection to the characterization of the goods on which the mark is used be withdrawn. This characterization was adopted after careful consideration of a somewhat unusual situation and seems to us to be needed to insure adequate protection of applicant's Trade Mark rights. The article on which the mark is used is the well known shredded wheat biscuit, known everywhere and commonly referred to as a biscuit. This product is in some respects like a cracker, and in fact this applicant makes a product of the same general nature as the shredded wheat biscuit, but much thinner and more compact and in those respects much more like a cracker. However, in the actual conduct of the applicant's business its shredded wheat biscuit competes with prepared cereal foods, such as are commonly referred to as breakfast foods. It does not compete to any substantial extent with products of the kind commonly sold as biscuits and crackers. In other words, though the product is called a biscuit it competes to an inconsiderable extent with

227479-4



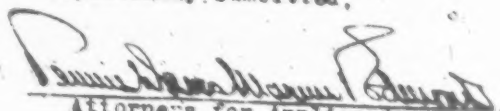
the products of bakers as that term is commonly used, and to almost the whole extent with prepared cereal or breakfast foods.

This seems to us to require that the Certificate of Registration name biscuits as the goods on which the mark is used because applicant's goods are commonly referred to as biscuits, and also crackers because applicant's product is similar to crackers and may readily be made up in a form even more closely similar to crackers, and also cereal foods because applicant's product, even though otherwise referred to, is in fact a prepared cereal food and competes with such food in the trade.

These considerations seem to us to fully justify the use of the characterization of applicant's goods as it appears in the statement, and we ask, therefore, that the objections presented in the first two paragraphs in the Examiner's letter be withdrawn.

The matters referred to in the foregoing were discussed at some length with the Examiner in charge of Trade Marks, and we wish to express our appreciation of the courtesy extended to us at that interview.

Respectfully submitted,

  
Attorneys for Applicant.



189

ADDRESS ONLY  
THE COMMISSIONER OF PATENTS  
WASHINGTON, D. C.

No. 287479

DEPARTMENT OF COMMERCE  
UNITED STATES PATENT OFFICE  
WASHINGTON

The Shredded Wheat Company,

MAILED

MAY 1 1906

Sir:

Your APPLICATION for REGISTRATION OF TRADE-MARK for

Biscuits, crackers and cereal foods cooked or prepared for  
consumption,

REGISTERED

has been examined and allowed.

The CERTIFICATE OF REGISTRATION will be issued and forwarded  
to you as soon as practicable in due order of business.

Very respectfully,

Thomas E. Robertson  
Commissioner of Patents.

Pennie, Davis, Marvin & Edwards,  
185 Broadway,  
New York, N.Y.

227479-6



Registered May 25, 1926.

Trade-Mark 213,456

**UNITED STATES PATENT OFFICE.****THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.**

ACT OF MARCH 19, 1909.

Application filed February 18, 1924. Serial No. 227,479.

**SHREDDED  
WHEAT****STATEMENT.***To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for BISCUITS, CRACKERS, AND CEREAL FOODS COOKED OR PREPARED FOR CONSUMPTION, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1920. The trade-mark has been continuously used and applied to said goods in applicant's business since January 1, 1899. The trade-mark is applied or affixed to the goods or to the packages containing the same by placing thereon a printed label on which the trade-mark is shown or by printing the trade-

mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. Applicant is the owner of trade-mark registration No. 178,725, granted January 15, 1924.

The undersigned hereby appoints William H. Davis, Arba B. Marvin, Dean S. Edmonds, Frank E. Barrows, W. Brown Morton, Merton W. Sage, and Willis H. Taylor, Jr., (constituting the firm of Pannic, Davis, Marvin & Edmonds, 165 Broadway, New York city, registration No. 10,839), and each of them, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate of registration, and to transact all business in the Patent Office connected therewith.

**THE SHREDDED WHEAT COMPANY,**  
By CHAS. H. BROWN, Jr.,

Treasurer.



CLASSIFICATION

1926

## CONTENTS:

(Application *P.K.* papers.)

COLLECTION

1. \_\_\_\_\_
2. *Letter - Apr. 21, 1926*
3. \_\_\_\_\_
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TRADE-MARK:

Claims use since

*Jan. 4, 1894*







DEFENDANT'S EXHIBIT NO. 236.

TRADEMARK REGISTRATIONS OF PLAINTIFF.

Renewed.

The Shredded Wheat Co., a corporation of New York, assignee.

**TRADE-MARK**

No. 52,858.

REGISTERED MAY 22, 1906.

THE NATURAL FOOD COMPANY.

BISCUIT OR CRACKERS.

APPLICATION FILED JUNE 2, 1906.



WITNESSES

*George H. Anderson*

PROPRIETOR

*The Natural Food Company**By E. W. Anderson*  
its Attorney







Renewed.

The Shredded Wheat Co., a corporation of New York, assignee.

## UNITED STATES PATENT OFFICE.

THE NATURAL FOOD COMPANY, OF NIAGARA FALLS, NEW YORK  
TRADE-MARK FOR BISCUIT OR CRACKERS.

No. 52,858.

Statement and Declaration.

Registered May 22, 1904.

Application filed Jan. 8, 1905. Serial No. 7,328.

## STATEMENT.

*To all whom it may concern:*

Be it known that THE NATURAL FOOD COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of Niagara Falls, in the county of Niagara, in said State, and doing business at the corner of Buffalo avenue and Fourth street, in said city of Niagara Falls, has adopted for its use a trade-mark, of which the following is a description.

The trade-mark consists of the conventional representation of the mythological character "Ceres," represented as holding a lighted torch in one hand and a sheaf of wheat in the other.

This trade-mark has been continuously used in the business of said corporation since January 1, 1894.

The class of merchandise to which the trade-mark is appropriated is bakers' ware or bread, and the particular description of goods comprised in said class upon which said trade-mark is used is biscuit or crackers.

The trade-mark is usually displayed on the packages containing the goods by printing the same on the package.

[L. s.]

THE NATURAL FOOD COMPANY,  
By BIRNEY L. HERRICK,  
*Secretary.*

## DECLARATION.

State of New York, county of Niagara, ss:

BIRNEY L. HERRICK, being duly sworn, deposes and says that he is secretary of the corporation, THE NATURAL FOOD COMPANY, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person or firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form, or in any such near resemblance thereto as might be calculated to deceive; that the said trade-mark is used by the said corporation

in commerce among the several States of the United States and particularly between the State of New York, and the State of Illinois, and between the United States and foreign nations, and particularly with Great Britain, and that the description, drawing, and fac-similes presented truly represent the trade-mark sought to be registered.

BIRNEY L. HERRICK.

Subscribed and sworn to before me, a notary public in and for the State of New York, this 19th day of April, 1905.

[L. s.]

HECTOR W. MACBEAN,  
*Notary Public, Niagara County, N. Y.*







# UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR CEREAL BISCUIT.

85,186.

Registered Jan. 30, 1912.

Application filed May 6, 1911. Serial No. 54,292.

## STATEMENT.

To all whom it may concern:

Be it known that THE SHREDDED WHEAT COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of Niagara Falls, county of Niagara, in said State, and doing business at the corner of Buffalo avenue and Fourth street, in the city of Niagara Falls, in said State, has adopted for its use the trade-mark shown in the accompanying drawing, no claim being made to the representation of a shredded wheat biscuit, for cereal biscuit, in Class No. 46, Foods and ingredients of foods.

The trade-mark has been continuously used in the business of said corporation since September 15, 1909.

The trade-mark is applied or affixed to the packages containing the goods by printing the same on said packages or by placing thereon a printed label on which the trade-mark is shown.

THE SHREDDED WHEAT COMPANY,  
By A. J. PORTER,  
President.



## DECLARATION.

State of New York Niagara county ss:

ALEXANDER J. PORTER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by

said corporation in commerce among the several States of the United States; that the drawing presented truly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

ALEXANDER J. PORTER.

Subscribed and sworn to before me, a notary public, this first day of November in the year 1910.

[L. S.]

JAS. TRAVERSE,  
Notary Public.

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."







# UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR SHREDDED WHEAT.

89,071.

Registered Nov. 5, 1912.

Application filed December 7, 1911. Serial No. 89,112.

## STATEMENT.

To all whom it may concern:

Be it known that THE SHREDDED WHEAT COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of Niagara Falls, county of Niagara, and State of New York, and doing business at the corner of Buffalo avenue and Fourth street, in the city of Niagara Falls, in said State, has adopted and used the trade-mark shown in the accompanying drawing, for shredded wheat, in Class No. 46, Foods and ingredients of foods.

The trade mark has been continuously used in the business of said corporation since March 1, 1910.

The trade mark is applied or affixed to the packages containing the goods by printing the same on such packages or by placing thereon a printed label on which the trade mark is shown.

No claim is made herein to the words "The Home of Shredded Wheat."

THE SHREDDED WHEAT COMPANY,  
By ALEXANDER J. PORTER,  
President.

THE HOME OF SHREDDED WHEAT



## DECLARATION.

State of New York county of Niagara ss:

ALEXANDER J. PORTER, being duly sworn deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade mark is used by said corporation in commerce among the several States of the United States; that the drawing truly represents the trade mark sought to be registered and that the specimens show the trade mark as actually used upon the goods.

culated to deceive; that said trade mark is used by said corporation in commerce among the several States of the United States; that the drawing truly represents the trade mark sought to be registered and that the specimens show the trade mark as actually used upon the goods.

ALEXANDER J. PORTER.

Subscribed and sworn to before me, a notary public, this 6th day of November, 1911.

[L. S.]

JAMES TRAVERSE.

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."







Registered Jan. 15, 1924.

Trade-Mark 178,725

**UNITED STATES PATENT OFFICE.**

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK,

ACT OF MARCH 19, 1909.

Application filed November 14, 1908. Serial No. 192,259.

**SHREDDED  
WHEAT****STATEMENT.***To the Commissioners of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for **BISCUIT OR CRACKERS**, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1909. The trade-mark has been continuously used and applied to said goods in ap-

plicant's business since January 1st, 1894. The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown, or by printing the trade-mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. E. W. Anderson & Son (George Manne Anderson) of Washington, D. C., are appointed attorneys for the prosecution of this application.

THE SHREDDED WHEAT COMPANY,  
By F. L. MOWEN,  
Secretary.







Registered May 25, 1926.

Trade-Mark 213,456

**UNITED STATES PATENT OFFICE.****THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.**

ACT OF MARCH 19, 1909.

Application filed February 19, 1925. Serial No. 257,479.

**SHREDDED  
WHEAT****STATEMENT.***To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for **BISCUITS, CRACKERS, AND CEREAL FOODS COOKED OR PREPARED FOR CONSUMPTION**, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods and requests that the same be registered in the United States Patent Office in accordance with the act of March 19, 1909. The trade-mark has been continuously used and applied to said goods in applicant's business since January 1, 1894. The trade-mark is applied or affixed to the goods or to the packages containing the same by placing thereon a printed label on which the trade-mark is shown or by printing the trade-

mark directly on the package. The mark has been in bona fide use for not less than one year in interstate commerce by the applicant. Applicant is the owner of trade-mark registration No. 178,725, granted January 15, 1924.

The undersigned hereby appoints William H. Davis, Arba B. Marvin, Dean S. Edmonds, Frank E. Barrows, W. Brown Merton, Merton W. Sage, and Willis H. Taylor, Jr., (constituting the firm of Pennie, Davis, Marvin & Edmonds, 165 Broadway, New York city, registration No. 10,830), and each of them, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate of registration, and to transact all business in the Patent Office connected therewith.

THE SHREDDED WHEAT COMPANY,  
By CHAS. H. BROWN, Jr.,  
Treasurer.







Registered Aug. 17, 1926.

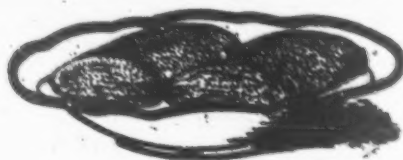
Trade-Mark 216,593

# UNITED STATES PATENT OFFICE.

THE SHREDDED WHEAT COMPANY, OF NIAGARA FALLS, NEW YORK.

ACT OF FEBRUARY 20, 1905.

Application filed February 12, 1909. Serial No. 237,480.



## STATEMENT.

*To the Commissioner of Patents:*

The Shredded Wheat Company, a corporation duly organized under the laws of the State of New York, and located and doing business at Niagara Falls, New York, has adopted and used the trade-mark shown in the accompanying drawing, for BISCUITS, CRACKERS, AND CEREAL FOODS COOKED OR PREPARED FOR CONSUMPTION, in Class 46, Foods and ingredients of foods, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended. The trade-mark has been continuously used and applied to said goods in applicant's business since September 15, 1909. The trade-mark is applied or affixed to the packages containing the goods by printing the same on said packages or by placing thereon a printed label on which

the trade-mark is shown. Applicant is the owner of trade-mark registration No. 85,186, granted January 30, 1912.

Applicant disclaims any exclusive right to the representation of two biscuits apart from the mark shown on the drawing.

The undersigned hereby appoints William H. Davis, Arba B. Marvin, Dean S. Edmonds, Frank E. Barrows, W. Brown Morton, Merton W. Sage, and Willis H. Taylor, Jr., (constituting the firm of Pennie, Davis, Marvin & Edmonds, 165 Broadway, New York city, registration No. 10,339), and each of them, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate of registration, and to transact all business in the Patent Office connected therewith.

THE SHREDDED WHEAT COMPANY,  
By CHAS. H. BROWN, Jr.,  
Treasurer.







## DEFENDANT'S EXHIBIT NO. 242

[NOTE: This patent only reproduced. Balance of patents in this exhibit found in Volume V.]

## UNITED STATES PATENT OFFICE.

HENRY D. PERKY, OF DENVER, COLORADO.

## BREAD AND METHOD OF PREPARING SAME.

SPECIFICATION forming part of Letters Patent No. 542,086, dated October 15, 1896.

Application filed March 15, 1894. Serial No. 525,777. (No specimen.)

To all whom it may concern:

Be it known that I, HENRY D. PERKY, a citizen of the United States, and a resident of Denver, in the county of Arapahoe and State of Colorado, have invented a certain new and useful Article of Food or Bread and the Preparation of the Same; and I do declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

An object of the invention is the production of an article of food or bread, consisting of externally-rough porous threads or filaments of wheat or similar grain, having the outer nutrition bran and gluten of the entire berry visibly mingled with the interior starchy portion thereof and adapted by their composition of entire grain-berries and their rough and porous thread-like or shred-like form to constitute, without other shortening or aeration, bread of especially light and wholesome character.

A further object of the invention consists in the novel art or method of preparing the grain or berry and reducing it to form without taking from the grain any of the beneficial qualities provided by nature and presenting the same in convenient form for service as a superior article of food without the aid of experts or skilled labor now required to produce palatable bread.

The usual methods practiced in the manufacture of flour and the resultant bread therefrom are such as to detract from the natural and healthful properties possessed by the grain in its original state. The addition of shortening, yeast, baking-powder, alum, or other foreign ingredients to render the bread light is also detrimental, and the entire method consumes a large amount of time and labor.

According to the improved method which I am now about to describe, the wheat is taken in the whole or berry form, and after being cleaned and thoroughly washed is boiled until corked, without destroying the whole or individual form of the berry. The time of boiling is usually about one hour. This operation, in addition to cooking the grains, removes from them the outer silicious coating

and adherent extraneous matter. It also destroys all insect life and removes the traces thereof. Before removal from the boiler the grain is seasoned with salt. The wheat, still in berry form, is, nevertheless, just after the boiling quite soft and its interior or starchy portion especially is watery. It can be easily mashed between the finger and thumb and is not in condition for proper compression until its inner and outer portions are brought more upon an equality in point of consistence. To this end the grain, being removed from the boiler, is allowed to dry for some hours—from twelve to twenty hours being usually sufficient—until the interior of the berry has, from the loss of some of its water, become more consistent. The grain should be constantly stirred or agitated during this part of the process to hasten the drying-out action and to prevent incipient fermentation. I prefer, therefore, to dry out the grain in rotating wire-cloth barrels or cage-tumblers. The berries should now have sufficient interior consistence to enable their outer and interior portions to be effectively incorporated with each other, such incorporation being accomplished by passing the grain between compression-rollers, one or both of which is provided with a series of fine circumferential grooves whereby the berries are mashed and their outer bran-coats, gluten layers, and starchy interior portion thoroughly incorporated together and forced into the grooves of the roller or rollers, whence the resultant food is discharged, by means of a comb or scraper, in the form of long fine filaments or threads of porous character and having a rough exterior admirably adapted to cause them to adhere together when being massed to form loaves or biscuit. The sinuous form and rough or jagged exterior shape of the filaments is designed also to provide small interstices throughout the mass, whereby the bread is thoroughly aerated and made very light.

The food as discharged from the rolls is ready for use without further cooking, or it can be shaped for baking in various ways. The food presented is pure wheat and all the parts of the berry are given to the consumer in attractive form. No chemical change is set up therein by the use of ferments or other



foreign ingredients, and the percentage of water in the food is much less than in ordinary bread.

The article as produced is a food or bread composed of superposed or massed layers or deposits of dry, externally rough, porous, sinuous threads or filaments of cooked whole wheat containing intermixed the bran, starch, and gluten of the entire berry, and which is absolutely free from leavening or raising material or their products.

The fine thread-like character of the component filaments of the bread and their disposition therein renders it tender, so that shortening is not required. All the nutrition and beneficial qualities of the berry are preserved in this admirable article of food, while its form gives it tenderness and lightness without the admixture of foreign ingredients.

Having described this invention, what I claim, and desire to secure by Letters Patent, is—

1. A food or bread composed of superposed or massed layers or deposits of dry, exter-

nally rough, porous, sinuous threads or filaments of cooked whole wheat containing intermixed the bran, starch, and gluten of the entire berry, and which is absolutely free from leavening or raising material, or their products.

2. The process of reducing cereals for food, consisting, first, in cooking the grain with salt, after it has been thoroughly cleaned, without destroying the whole berry form, second, partially drying the grain with constant agitation until its interior and exterior portions are of substantially the same consistency, and finally, compressing the grain to intimately commingle the outer or bran coats, gluten layers, and starchy, interior portions in the form of porous, rough filaments or threads, substantially as described.

In testimony whereof I affix my signature in the presence of two witnesses.

HENRY D. PERKY.

Witnesses:

J. M. STANLEY,  
HARRY C. JAMES.

Correction in Letters Patent No. 543,086.

It is hereby certified that in Letters Patent No. 543,086, granted October 15, 1895, upon the application of Henry D. Perky, of Denver, Colorado, for an improvement in "Bread and Methods of Preparing Same," an error appears in the printed specification requiring correction, viz: In line 47, page 1, the word "cooked" should read *soaked*; and that the said Letters Patent should be read with this correction therein that the same may conform to the record of the case in the Patent Office.

Signed, countersigned, and sealed this 20th day of October, A. D. 1895.

[SEAL]

JNO. M. REYNOLDS,  
Assistant Secretary of the Interior.

Countersigned:

B. T. FARMER,

Acting Commissioner of Patents.



**CLERK'S CERTIFICATE.**

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*  
THIRD JUDICIAL CIRCUIT,

I, WM. P. ROWLAND, clerk of the United States Circuit Court of Appeals for the Third Circuit, Do HEREBY CERTIFY the foregoing to be a true and faithful copy of the original transcript of record (Volume IV, Exhibits) in the case of National Biscuit Co., Plaintiff-Appellant, v. Kellogg Company, Defendant-Appellee, No. 5801, on file, and now remaining among the records of the said Court, in my office.

(Seal) IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this eleventh day of August, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States the one hundred and sixty-second.

WM. P. ROWLAND,  
*Clerk of the U. S. Circuit Court of  
Appeals, Third Circuit.*